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The Chinese Challenge to Extraterritoriality 1911-1926

A Thesis

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The Faculty of the Department of History

San Jose State University

In Partial Fulfillment

of the Requirements for the Degree

Master of Arts

by

Elizabeth Perry

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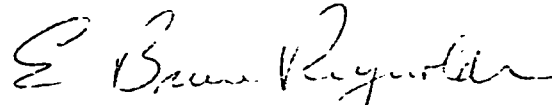
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ABSTRACT

THE CHINESE CHALLENGE TO EXTRATERRITORIALITY, 1911-1926

by Elizabeth Perry

This thesis addresses the Chinese challenge to extraterritoriality from 1911 through 1926. It examines the Chinese expectations after their 1911 revolution and places it within the larger framework of the international arena.

Research into this subject revealed that China during these years experienced civil war and virtual anarchy. While the Chinese blamed foreigners who had encroached upon their sovereignty, the international community attempted to maintain the status quo. The interests of the Chinese and the international community clashed as they attempted to resolve the extraterritorial question. Nationalistic Chinese used the issue of foreign encroachment to advance their political movements. Extraterritoriality became symbolic of foreign domination.

Chaos in China was such that many foreigners, including the American Minister John Van Antwerp MacMurray, were correct in proceeding cautiously with treaty revision as it pertained to extraterritoriality. When the Commission on Extraterritoriality met in 1926 it did not recommend an early end to the practice. Subsequently, as Chiang Kai-shek and the Kuomintang party made progress in unifying China, the Powers were pressured to grant treaty revision, but extraterritoriality would remain in place until World War II.

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CHAPTER 1

EXTRATERRITORIALITY IN CHINA FROM THE OPIUM WAR TO WORLD WAR I.

Wesley R. Fishel, author of Extraterritoriality in China, describes extraterritoriality as, "the extension of jurisdiction beyond the borders of the state."¹ As applied to China, extraterritoriality meant that foreigners, primarily businessmen and missionaries, were exempt "from local territorial jurisdiction" of Chinese law.² This chapter examines the development of the practice of extraterritoriality from its inception in the middle of the nineteenth century. After reviewing the initial causes for the practice of extraterritoriality, this chapter will examine the impact of the 1911 revolution and the relationship between the business community and the Chinese government.

When the practice of extraterritoriality was established there existed a basis for international and territorial jurisdiction among European and Christian nations. Since China was neither, as Fishel points out, representatives of these nations shared the view that China could not "claim the protection" of international law.³ This loophole derived from international law worked to the benefit of Britain in 1842 when it sought to exert its influence after defeating the Chinese in the Opium War. The victory provided the British the opportunity to

¹ Wesley R. Fishel, The End of Extraterritoriality in China (New York: Octagon Books, 1974), 2.

² Ibid.

³ Ibid., 3.

gain both economic and political advantage over the Chinese, who were then under the rule of the Manchu Ch'ing Dynasty. The Treaty of Nanking, which was signed in 1842, had thirteen provisions to ensure that England would maintain a favorable trading position under the guise of friendship.

Consequently, British citizens and their families were allowed to reside in China for the purpose of trade in the port towns of Canton, Amoy, Foochowfoo, Ningpo and Shanghai. In addition, Hong Kong became a British colony subject to English laws. Because an indemnity in the amount of \$6,000,000 was forced upon the Chinese government for the loss of opium and as ransom for British subjects sentenced to death in China, Britain, as set forth in this treaty, established consular offices in these ports which would be responsible for collecting dues which would be paid to the government of England. Furthermore, as a condition of this treaty, China agreed to the unconditional release of British subjects accused of crime, the practice of extraterritoriality was established.

The 1842 Nanking treaty with Britain exposed the Chinese dynasty as weak. Other nations soon followed suit to establish similar treaties. Caleb Cushing, a congressman from Massachusetts, was sent to China to secure a treaty for the United States. The Treaty of Wanghia between the United States and China was signed in 1844 and, as Jonathan Spence noted, "followed the same lines as the British [treaty], but was much longer and had a number of

important additions."⁴ These additions included provisions for American Protestant missionaries to promote their religious beliefs. Thus the epoch of foreign dominance in China began.

Shanghai, as Article 2 of the treaty between the Britain and China noted, became an international settlement with extraterritorial protection. As Parks M. Coble pointed out: "China never formally ceded sovereignty of this land, but because of extraterritoriality these foreign settlements became virtually independent of Chinese Control."⁵ Ultimately the international settlement of Shanghai became economically profitable to the foreigners and extraterritoriality was viewed as necessary to insure foreign business interests.

Britain, France, the United States and Japan established consular courts. Britain through the Consular Ordinances of 1844 and 1853, as Fishel notes, "systemized the juridical structure and provided the Privy council with the authority to issue orders in council regulating the operation of British jurisdiction in China."⁶ Next, the government of France developed "an organized method of extraterritoriality" which limited Chinese control. The United States established courts for China which "held virtually the same status in the American judicial system as a district court within the continental United States."⁷ In addition,

⁴ Ibid., 161.

⁵ Parks M. Coble, Jr., The Shanghai Capitalists and the Nationalist Government 1927-1937 (Cambridge: Harvard University Press, 1980), 14.

⁶ Fishel, The End of Extraterritoriality in China (New York: Octagon Books, 1974), 16.

⁷ Ibid., 14.

Japan, through the Treaty of Commerce and Navigation in 1896, established the right of extraterritorial privilege in China. Furthermore, this treaty also included the recognition of Japanese rights and special interest in both Manchuria and Port Arthur.

Moreover, as Fishel notes, "until the loss of their rights following World War I, Russia, Germany, and Austria operated well-organized jurisdictional systems" in China.⁸ Eventually, even the less powerful nations of Portugal, Belgium, Italy, Brazil, Denmark, Netherlands, Norway, Spain, Switzerland and Sweden established consular courts in China, too. In addition to such consular courts there were international mixed courts which "tried cases, criminal and civil, against persons under Chinese jurisdiction."⁹ Although the mixed courts abided by Chinese law, the foreign presence ultimately incited anti-foreign sentiment. Extraterritoriality impaired Chinese sovereignty and the country was influenced by foreigners and their economic considerations.

Western businessmen believed that the ability to maintain a favorable trading relationship depended upon the continued practice of extraterritoriality. As late as 1929, H. G. W. Woodhead wrote in the China Year Book that its existence "has assured the lives and property of American citizens in China [which established] the security so necessary to their growth and development."¹⁰

⁸ Ibid.

⁹ Ibid., 23.

¹⁰ G. W. Woodhead, Extraterritoriality in China: The Case Against Abolition (North China: Tientsin Press, Ltd, 1929), 4.

In the late nineteenth century various countries, including France and Japan, challenged British dominance in China, establishing their own consular offices and competing concessions, within China. Japan, which in 1895 defeated China in the Sino-Japanese War, forced China to cede Taiwan and the Liaotung Peninsula to Japan and pay an indemnity of 200 million taels. As a consequence, "foreign bankers, with the encouragement of their governments, began competing for the highly profitable privilege of financing the high Japanese indemnity."¹¹ Thus China's sovereignty was further impaired.

Although Americans had not participated in this concession grabbing, they were concerned about trade and sought to ensure fair and open competition. Therefore, a policy aimed at ensuring this, known as the "Open Door," emerged by 1898. It evolved from a series of notes between W. W. Rockhill of the U.S. Legation and Alfred Hoppisley of the English Maritime Customs Services on the need to maintain free trade in China. As historian Michael Hunt wrote: "these first open door notes were a token nod to the future possibilities of the China market and a tribute to the influence and persistence of the China trade pressure groups."¹²

In the same year, 1898 a group of American investment banks -- Jacob Schiff, Loeb and Co., National City Bank, and the Chase National Bank --

¹¹ R.A. Dayer, Bankers and Diplomats in China (Totowa, NJ: Frank Cass and Company Limited, 1981), 8.

¹² Michael H. Hunt, The Making of a Special Relationship: The United States and China to 1914 (New York: Columbia University Press, 1983), 153.

established The China Development Corporation. Their main purpose was to exploit the investment potential in China. This group secured a concession to build a Hankow - Canton railway.¹³

Paralleling the development of foreign influence was the continued decay of the internal structure of the Chinese government. The last dynasty, the Ch'ing, was falling apart. The weakness of the Ch'ing Dynasty was exposed in 1900 when the Boxers United in Righteousness led a rebellion against both foreign dominance and internal decay. During the summer of 1900 foreigners were held captive within their Peking legations for days. As R.A. Dayer noted, "the Boxer Rebellion of 1900 temporarily united all Europeans [and Americans] in China in a common struggle for survival."¹⁴ Ultimately the Boxers were defeated, but the uprising re-enforced the view in the foreign community that extraterritoriality was more necessary than ever. An indemnity of 67 million pounds imposed upon the Ch'ing government as a consequence of the Boxer Rebellion gave foreign banks another opportunity to capitalize on the situation by extending loans to China.

While foreign investment facilitated foreign infringement of Chinese sovereignty, it could be argued that it offered the Chinese government and local businessmen an opportunity to modernize their country through an alliance with such foreign combines as the American China Development Company. For

¹³ Ibid., 150.

¹⁴ Dayer, Bankers and Diplomats in China, 11.

example, as noted, in J. V. A. MacMurray's Treaties and other Agreements Concerning China, a 1905 pact which extended the 1898 agreement with the China Development Company contained a stipulation for the ultimate sale of the Canton-Hankow Railway to the Chinese government. This would enable the Chinese government to:

take over and control all the Development Company's property in China, the railway already built, the railroad materials, surveys and plans, special mining Powers, together with the Powers and privileges in China thereunto appertaining, whether expressed or implied, whatsoever.¹⁵

Furthermore, agreements concerning the petroleum industry were designed to be mutually beneficial to the Standard Oil Company as well as Chinese investors. The Standard Oil agreement with the government of China allowed for Chinese citizens to "purchase shares in the American-Chinese Corporation [on] the open market."¹⁶

Because of such agreements, Chinese officials, although mistrustful of all foreigners, viewed Americans with slightly less suspicion. Accordingly, Chinese diplomats, as Dayer noted, "negotiated a Preliminary Agreement for [a] currency Reform and Industrial Development loan with the American group of bankers on October 27, 1910. The American bankers then turned around and agreed to share the loan with the British, French and German bankers."¹⁷

¹⁵ John Van Antwerp MacMurray, Treaties and Agreements with and Concerning China 1849-1919: A Collection of State Papers, Private Agreements, and Other Documents (Washington: Publication of the Carnegie Endowment for International Peace, 1921), 520.

¹⁶ MacMurray, Treaties and Agreements with and Concerning China 1894-1919, 1110.

¹⁷ Dayer, Bankers and Diplomats in China, 21.

Even at this early stage there was talk about the eventual abolition of extraterritoriality. When, as historian Edith E. Ware has noted, in 1902 and 1903 the Chinese

protested against the stigma of extraterritoriality they were told by the Powers that as soon as they had laws and courts like those of the West, then the Powers might withdraw the special consular jurisdiction for the protection of their citizens.¹⁸

With the development of modern industries, especially railroads, a business class of elite Chinese bankers emerged. Historian Parks Coble indicated that they were able to emerge because of the Western presence and they enjoyed considerable independence due to the weakness of the Chinese government.¹⁹ There were those in China who correctly saw the necessity to modernize and reform their society in order to avoid further penetration by the foreign community and signed agreements with foreign companies, many of which were American, in order to strengthen their economy. It would be these agreements in 1925-26 which nationalistic Chinese came to view as imperialistic. Yet at the time these agreements were necessary to the economic stability of China.

¹⁸ Edith E. Ware, Business and Politics in the Far East (New Haven: Yale University Press, 1932), 14.

¹⁹ Coble, The Shanghai Capitalists and the Nationalist Government 1927-1937, 20.

Ultimately it was the failure of the government, and the lack of cohesion of the new elite which hampered economic development within China. As MacMurray pointed out, "directors of corporations" did not feel "any inhibition upon their borrowing corporate funds for the purpose of speculation, in stocks or in exchange, for their personal profit."²⁰ Further, Chinese corporate ventures "frequently ended in bankruptcy through some fluctuation in shares" which led to increased debt and instability within the Chinese governmental and economic sectors.²¹

Businessmen and bankers were not the only ones to exploit the weakness of China. As Hunt points out, missionaries rode "the tail of the open door."²² These missionaries offered "medical care, famine relief and education" and "to the disaffected he [the missionary] held out the prospect -- not always realized -- of support in lawsuits and controversy over land debts, taxes, business affairs, and criminal activity."²³ Efforts by Chinese Christian converts to take advantage of extraterritoriality also encouraged anti-foreign sentiment.

As the Manchu government was in decline there was one revolutionary who had the potential to revise the internal structure of the Chinese government. This individual was Dr. Sun Yat-sen, born in 1866 and often considered to be the

²⁰ John Van Antwerp MacMurray, "Problems of Foreign Capital in China," Foreign Affairs 3 (April 1925): 415.

²¹ Ibid.

²² Hunt, The Making of a Special Relationship, 156.

²³ Ibid.

father of the Chinese revolution. When Dr. Sun studied in Hawaii and Hong Kong he witnessed the modernization process and saw the positive results in these areas which had come under the influence of the Western Powers. Dr. Sun decided the only way China could survive in the modern world was to adopt a republican form of government based upon democratic ideals. As Dr. Sun's memoirs demonstrate, he sought to establish "a government by the people, of the people and for the people."²⁴

Dr. Sun realized that in order to overthrow the government an ideology which could be grasped by the ordinary Chinese was needed to frame his revolution. What he found, and later capitalized on, was the concept of nationalism. As historian Immanuel C.Y. Hsu noted:

Hawaii was experiencing problems not unlike those confronting China. Although Hawaii did become a republic in 1893, it was constantly under the threat of American annexation. From this historical lesson Sun became convinced that it was insufficient to merely overthrow the Manchu dynasty and establish a republic; it was imperative to instill in the people a strong sense of nationalism with which to reconstruct the country and preserve their independence.²⁵

With this goal in mind Dr. Sun created the Revive China Society in 1895.

According to Hsu:

Sun resolved to return to his initial goal of revolution and [sought] aid from those whom he knew best—the Chinese overseas, the secret societies, the Christian converts, and the missionaries—men existing on the fringes of Chinese society²⁶.

²⁴ Sun Yat-sen, Memoirs of a Chinese Revolutionary (Philadelphia: David McKay Company, 1919), 12.

²⁵ Immanuel C.Y. Hsu. The Rise of Modern China (4th ed.), (New York: Oxford University Press, 1990), 456.

²⁶ *Ibid.*, 457.

Thus it became necessary for Dr. Sun to achieve his goal of revolution by using the ideology of nationalism, which could both appeal to Chinese intellectuals and be filtered down to the common Chinese. Sun's revolutionary ideals were built upon the Three Principles of the People: nationalism, democracy and socialism. The first principle of nationalism was an attempt by Dr. Sun to create a desire within the Chinese people to attain the status of a nation and to rid China of foreign domination. After China became unified through nationalism, the next step would be the establishment of a democratic process. Finally, the third principle of socialism could be achieved through land distribution. As Dr. Sun noted, this was necessary since:

the rich own all the land, while the poor have not even a little plot. The reason for this inequality is the difference in productive power. For example, in ancient times timber-cutters used axes, knives, etc., for their work, whereas today industry is greatly developed, machines have replaced human labor, and the result is that much greater quantity of products is secured at the expense of much less human energy.²⁷

The latter concept, the establishment of a socialistic form of government based on redistribution of land would ultimately would incite the workers to rally around the nationalist cause. However, when Russia in 1917 established a communistic form of government the foreigners viewed Dr. Sun and the Kuomintang with suspicion.

Although Dr. Sun sought to overthrow the existing Manchu government, and establish a republic, he also recognized the necessity of modernization.

²⁷ *Ibid.*, 232.

Therefore, the infrastructures which the Western Powers brought with them, railroads for example, were in accordance with Dr. Sun's goals. As Harold Z. Schiffrin concluded, "Sun's nationalism was also exceptional in its internationalist motif, in its recognition of the interdependence of nations in the modern world."²⁸ By the time the revolution occurred in China, Dr. Sun had firmly established in his mind both the need for reform through nationalist means and cooperation with the Western Powers. But Dr. Sun would ultimately be rejected by the Western Powers and forced to look elsewhere for support.

Dr. Sun's goal of overthrowing the Ch'ing Dynasty was finally realized in 1911. On October 9 "a bomb accidentally exploded in the revolutionary headquarters located in the Russian concession of Hankow," leading to a full fledged revolution.²⁹ Dr. Sun received the news while traveling in Colorado. He immediately headed for China. Once the revolution was set in motion, the strongest modern army in China, known as the Peiyang Army, turned against the Manchus and sided with the rebels. Consequently, this revolution led to the forced abdication of the Manchus by the leader of the Peiyang Army, Yüan Shi-k'ai. Since Yüan had worked in conjunction with the revolutionaries he was named the first President of the Republic of China, supplanting Dr. Sun in this role.

²⁸ Harold Z. Schiffrin, Sun Yat-sen and the Origins of the Chinese Revolution (Berkeley, University of California Press, 1968), 155.

²⁹ Hsu, The Rise of Modern China. 468.

Had it been possible to establish a new form of government based upon Western law in 1911, the eventual abolition of extraterritoriality might have been possible. However, disintegration of the new government prevented this from occurring. The new government, under the leadership of Yüan, implemented a parliamentary system with key members of the Peiyang Army assuming positions of power. As Lucian W. Pye noted:

Tuan Ch'i-jui [was named] as minister of war, a post of great nominal authority but one which would weaken its holder's contacts with those elements of the Peiyang forces that were loyal to him. Tuan, however, . . . [was concerned with] attempting to re-establish the old Peiyang Army as the new National Army and thereby strengthen his own hand. Feng Kuo-chang was appointed Military Governor of Chihli-an office that was of less prestige value but left him in direct command of those elements of the Peiyang that were loyal to him personally. Yüan Shih-k'ai, in the meantime, turned his attention to the establishment of a new model army, depending upon lesser generals.³⁰

Ultimately these militarists, Tuan and Feng, as well as Chang Tso-lin in Manchuria, would vie for power and create chaos within China.

When chaos developed, Yüan attempted to capitalize on the situation by declaring himself emperor. Shortly thereafter he nullified the constitution and assumed the role of dictator, but soon died, leaving other warlords to struggle for power. At this point Dr. Sun realized the necessity of developing "views on the kind of program he favored for China and the kind of political organization he thought could attain that program."³¹ Subsequently, his program was defined

³⁰ Lucian W. Pye, Warlord Politics (New York: Praeger Publishers, 1971), 15.

³¹ Spence, Jonathan D., The Search for Modern China (New York: W.W. Norton & Company, 1990) 294.

and backed by a political party known as the Kuomintang, which would become the new revolutionary party. Eventually Dr. Sun retreated to Canton to develop his revolutionary movement.

Further adding to the chaos in China were Japanese efforts to exploit the divisions within the new government of China and its weakness. The infamous Twenty-one Demands of 1915 included claims to far more extensive economic rights for Japanese subjects in Manchuria and Inner Mongolia, joint Sino-Japanese administration of the huge Han-Ye-P'ing iron and coal works in central China, non-alienation of any Chinese ports or islands to other foreign Powers, the stationing of Japanese police and economic advisors in North China, and extensive new commercial rights in the region of Fukien province.³² Japan also took the opportunity to exert firmer control over the newly formed concessions in Manchuria. The leaders of the Japanese Kwantung army in Manchuria aligned with warlord Chang Tso-lin to create what, Gavan McCormack has described as, "a secessionist regime."³³

After Yüan's death in 1915, Li Yuan-hung became the new President of China, but various leaders of the new government vied for power, leading to what historian Dorothy Borg terms, "the decisive victory of military over civilian government in the North."³⁴ Still the illusion of a government in Peking was

³² Ibid., 286.

³³ Gavan McCormack, Chang Tso-lin in Northeast China, 1911-1928 (Stanford: Stanford University Press, 1977), 28.

³⁴ Dorothy Borg, American Policy and the Chinese Revolution 1925-1928 (New York: American Institute of Pacific Relations and The Macmillian Company, 1947), 15.

maintained. Three military factions, "the Anfu Club headed by Tuan Chi-jui, the Fengtien Party of the Manchurian warlord Chang Tso-lin, and the Chihli group led by Ts'ao Kun," battled for supremacy.³⁵

The Peking government, in the midst of this internal chaos, needed capital to finance its struggle to maintain its position. The government of the United States, led by President Woodrow Wilson and propelled by the principles of the "open door," understood the financial necessity of developing China. On November 16, 1916 the Continental and Commercial Trust and Savings Bank agreed to loan the struggling government of China \$5,000,000.³⁶ By negotiating loans with the Peking government the United States became an active participant in the conflict in China.

In 1918 the international banking community, in cooperation with Chinese elites, established a Banking Consortium including banks from the United States, Great Britain, France and Japan.³⁷ An agreement was established between the Chinese government and the Banking Consortium, which included bankers from the United States, Great Britain, France and Japan, in 1918. Although the foreigners exploited the weakness of the Chinese government, the flow of capital from the banking consortium into China had the potential to benefit China.

³⁵ Ibid., 14.

³⁶ MacMurray, Treaties and Agreements with and Concerning China 1894-1919, 1337

³⁷ Akira Iriye, After Imperialism: The Search for a New Order in the Far East 1921-1931 (Cambridge: Harvard University Press, 1965), 14.

When China lost the Opium War in 1842 to Britain, the Manchu Dynasty was exposed as weak. Consequently, the Treaty of Nanking established the practice of extraterritoriality. Once this occurred other countries, including the United States, began the practice as well. By the turn of the century, foreigners had encroached upon Chinese sovereignty to such an extent that ultimately the Manchu Dynasty collapsed under the pressure, resulting in the formation of a republic in 1911. Ultimately extraterritoriality came to be viewed as symbolic of foreign domination.

CHAPTER 2

WORLD WAR I AND THE WASHINGTON CONFERENCE

On August 14, 1917 China declared war against Germany and Austria-Hungary, siding with the Allied Powers. The stated purpose was the desire to "put an end to the calamities of war and to hasten the restoration of peace," but China hoped to benefit by supporting the winning side.³⁸ Since Germany had held a major concession in the province of Shantung, the government of China anticipated that with an allied victory, the territory would be returned to it.

In addition, China immediately abrogated all treaties with Germany and established legal jurisdiction over German citizens. The Chinese Ministry of Foreign Affairs advised Washington that only those cases which involved "Germans and Austrians and Americans" would be "tried by the American Consuls;" all other cases were to be "tried by the Chinese courts."³⁹ Despite the fact the Americans and other Western countries still retained their extraterritorial privileges this was a significant gain for China, as was the consequence of the fall of the Czarist regime in Russia in October of 1917. As Fishel noted, "the Chinese government considered the Russian legation in Peking and the Russian consuls in China to have lost their status."⁴⁰

³⁸ John Van Antwerp MacMurray, Treaties and Agreements with and Concerning China 1894-1919: A Collection of State Papers, Private Agreements, and other Documents (Washington: Publication of the Carnegie Endowment for International Peace, 1921), 1362.

³⁹ *Ibid.*, 1373.

⁴⁰ Wesley R. Fishel, The End of Extraterritoriality in China (New York: Octagon Books, 1974), 44.

Toward the end of World War I the Soviet Union, under the new Bolshevik regime, renounced certain international agreements made by the former Czarist government. As historian Chow Tse-tsung explained:

In February 1918 the Soviet Union made a truce with the Central Powers and both made public and renounced a series of secret Russo Japanese agreements which had been concluded in the period 1907 to 1917 by the Czarist government. In these agreements Japan and Russia had planned to wrest Manchuria and Mongolia from China, and to prevent China's receiving political aid from any other power.⁴¹

This created a favorable image in China for the new Bolshevik rulers in Russia and their government became a new model for nationalistic Chinese to follow.

Yet Japan continued its quest for dominance, approaching the Chinese government to secure, as Chow Tse-tsung noted,

Tuan Ch'i-jui's consent to negotiate from March to May 1918 the Sino-Japanese Military Mutual Assistance Conventions. By these conventions the Chinese government conceded to Japan the right to station troops in Northern Manchuria and Outer Mongolia.⁴²

As a consequence, Tuan's government was viewed as traitorous, and was the object of protests and student demonstrations.

Although there were Chinese who served on the side of the Allied Powers during World War I, the Peace Conference at Paris in 1919 proved to be a disappointing experience for the Chinese who had placed their faith in the allied cause. President Woodrow Wilson's principle of self-determination initially gave the Chinese hope, but Britain and France had secretly agreed that the German

⁴¹ Chow Tse-tsung, The May Fourth Movement: Intellectual Revolution in Modern China (Cambridge: Harvard University Press, 1964), 79.

⁴² *Ibid.*, 79.

concessions would go to Japan, a further blow to Chinese sovereignty. Lou Tseng-tsiang, the Chinese delegate to the conference, expressed his indignation at the situation when he noted that "the proposed division of political and economic rights and the substitution of Japan for Germany in Shantung" would so entrench the Japanese "influence in this Province as to expose China to a greater menace than before."⁴³ The outcome was, as Fishel stated, "public indignation" toward the Powers and a rise of a "unified Chinese spirit" developed in response to the Versailles Treaty.⁴⁴

Chinese indignation over the treatment of their country at the Versailles Conference, combined with discontent with the central government in Peking, led to an "intellectual ferment" and a Chinese determination to "revive their strife ridden and civil war-torn country."⁴⁵ Ultimately a New Culture Movement developed which reflected a commitment to change the country both internally and externally. This new commitment to change became apparent with the May 4th Movement in response to the Versailles Treaty. On May 4, 1919 students in Peking demonstrated "against the verdict of the Versailles Peace Conference" as it pertained to Shantung.⁴⁶ As a result of these demonstrations, China refused to sign the peace treaty.

⁴³ MacMurray, Treaties and Agreements with and Concerning China 1894-1919, 1495.

⁴⁴ Fishel, The End of Extraterritoriality in China, 40.

⁴⁵ Immanuel C.Y. Hsu, The Rise of Modern China (4th ed.), (New York: Oxford University Press, 1990), 494.

⁴⁶ *Ibid.*, 502.

The insult to Chinese nationalism was further exacerbated when the government of China negotiated a loan

for the construction of the Tsinan-Shunteh and Kaomi-Hsuchow railroads in Shantung Province, as a result of which the whole property and income of the two railroads was mortgaged for the repayment of the loan.⁴⁷

In response to both the Versailles Treaty and the railroad agreement students organized demonstrations against Japan to show their outrage. Nor were the Twenty-one Demands forgotten. Ultimately the loss of Shantung and the Demands became symbolic of Japanese dominance and nationalistic fervor led to boycotts of Japanese goods.

In the wake of the May 4th Movement it became increasingly clear that the Powers, particularly Japan, were intent on maintaining a dominant position in China. The Versailles Treaty became symbolic of this dominance. Ultimately some leaders of the May 4th Movement created the Chinese Communist Party based on the Soviet model. These patriotic leaders were Li Ta-Chao and Ch'en Tu-hsiu, who had turned against the Anglo-American model of progress and democracy, stressing instead the danger that capitalism and imperialism posed."⁴⁸ The Marxist model, which the Bolsheviks applied in Russia, would

⁴⁷ Chow Tse-tsung, The May Fourth Movement: Intellectual Revolution in Modern China, 87.

⁴⁸ Michael H. Hunt, The Genesis of Chinese Communist Foreign Policy (New York: Columbia University Press, 1996), 66.

become a plausible alternative to the warlord-controlled government. Thus the student movement of May 4th would start China on the path away from the West and toward Communist Russia. Ultimately, Dr. Sun's Kuomintang party would also come to embrace the Soviet model and unite temporarily with the Chinese Communist Party to attain nationalistic goals.

In 1921, two years after the Versailles Treaty, the world Powers gathered in Washington for a conference on disarmament and issues pertaining to the Far East. Present at this conference were the United States, Belgium, the United Kingdom, China, France, Italy, Japan, the Netherlands and Portugal. Excluded were both Germany and Russia, since they no longer had special interests in China and for different reasons were being ostracized by the leading Powers.

This conference, which was essentially a world naval disarmament conference, attempted to deal with the delicate balance of power. One of the significant treaties of this naval conference was the Five Power Treaty which included the United States, the British Empire, Japan, France and Italy. Because Japan's interests were concentrated in East Asia, Tokyo accepted a total capital ship tonnage ratio three-fifths that of the two - ocean naval Powers Britain and the United States.

Since the international balance of power had changed there also was a need to reestablish order in the Far East. Accordingly, the Powers attempted to

usher out the old order and establish, as historian Akira Iriye put it, "a new era of economic foreign policy as a basis of reconciling and promoting their interests."⁴⁹

Since China was of concern to the United States, the British Empire, France, Japan, China, Belgium, Italy, the Netherlands and Portugal, all signed the Nine Power Treaty on February 6, 1922. The signatories pledged:

1. To respect the sovereignty, independence and the territorial and administrative integrity of China.
2. To provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable Government.
3. To use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China.
4. To refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects of citizens of friendly states and from countenancing actions inimical to the security of such states.⁵⁰

While these goals were noble they were merely platitudes to appease the Chinese in the wake of their disappointment at Versailles. The primary purpose of the Nine Power Treaty was to protect trade. Furthermore, since the Chinese government was weak, it assured Japanese dominance in the region. As John Van Antwerp MacMurray, an American delegate to the Washington Conference in 1921, wrote in 1935:

⁴⁹ Akira Iriye, After Imperialism: The Search for a New Order in the Far East 1921-1931 (Cambridge: Harvard University Press, 1965), 3.

⁵⁰ United States, Department of State Papers Relating to the Foreign Relations of the United States 1922 (Washington: Government Printing Office, 1940), 278-279. Hereafter cited as ERUS, 1922.

the essence of our traditional Far Eastern policy was that China, with its vast potentialities for economic development was the crux of the whole problem. Our actual trade with Japan has long been far greater than with China, and our political relations with Japan have had such additional importance as is consequent upon the fact that she might prove to be a contestant with us, economically or even militarily. China, by contrast, was a mere congeries of human beings, primitive in its political and economic organization, difficult and often troublesome to deal with in either aspect, and by its weakness constantly inviting aggressions that threatened such interests as we might have or hope for.⁵¹

As such MacMurray acknowledged the United States' interest in China was as a "supplier of raw materials and as a market for our exports."⁵² The political development of the Chinese government was merely a secondary concern.

Yet the Nine Power Treaty had long range implications for the development of China. Resolution V provided for the establishment of a commission to study the practice of extraterritoriality. Although the Powers were primarily interested in retaining their economic position in China they also realized the importance of appeasing Chinese nationalism. Furthermore, Resolution V was an acknowledgment that the practice of extraterritoriality ran counter to the development of China. Resolution V provided,

that the Governments of the Powers above named shall establish a Commission (to which each of such Governments shall appoint one member) to inquire into the present practice of extraterritorial jurisdiction in China, and into the laws and the judicial system and the methods of judicial administration of China, with a view to reporting to the Governments of the several Powers above named their findings of fact in regard to these matters, and their recommendations as to such means as they may find suitable to improve the existing conditions of the

⁵¹ John Van Antwerp MacMurray, How the Peace Was Lost: The 1935 Memorandum Developments Affecting American Policy in the Far East, edited and with Introduction and Notes by Arthur Waldron. (Stanford: Hoover Institution Press, 1992), 62.

⁵² Ibid.

administration of justice in China, and to assist and further the efforts for the Chinese Government to effect such legislation and judicial reforms as would warrant the several Powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality.⁵³

It would be the delay in implementing the agreements established at the Washington Conference that would encourage further unrest and push China's revolutionaries closer to the Soviet Union.

⁵³ "The Shanghai Affair and After," Foreign Affairs 4 (October 1925): 33.

CHAPTER 3

THE WARLORD ERA AND THE BOLSHEVIK INFLUENCE IN CHINA

In the period between 1922 and 1925, intense Chinese nationalist agitation and competition between the Powers resulted in a breakdown of cooperation. As MacMurray noted:

the attitude of the Chinese, who had come to the Washington Conference as supplicants had been genuinely thankful for the measure of satisfaction which its conclusions gave to their national aspirations, changed fundamentally during the three-year period of delay in bringing the treaties into effect.⁵⁴

This delay was the result of several factors. First, the Soviets allied with Dr. Sun and his Kuomintang party in an effort to, in the words of Akira Iriye, "create a new order at the expense of the Washington Powers."⁵⁵ The United States and Britain, in an attempt to recognize the status quo, supported the Peking government, which was loosely controlled by the Chihli faction under Wu P'ei fu, while Japan ultimately backed Chang Tso-lin. Finally, internal chaos within the Peking government led to a lack of willingness on the part of the Washington Powers to take seriously Chinese requests for the abolition of extraterritoriality.

The implementation of the provisions set forth at the Washington Conference was hindered particularly by the French government. In 1921 when the Banque Industrielle de Chine failed, France attempted to "rehabilitate it by

⁵⁴ John Van Antwerp MacMurray, How the Peace Was Lost: The 1935 Memorandum Developments Affecting American Policy in the Far East, edited and with Introduction and Notes by Arthur Waldron. (Stanford: Hoover Institution Press, 1992), 68.

⁵⁵ Akira Iriye, After Imperialism: The Search for a New Order in the Far East 1921-1931 (Cambridge: Harvard University Press, 1965), 155.

diverting to it the major portion of the Boxer indemnity funds" which had been suspended after World War I.⁵⁶ When the French delegates to the Washington Conference "insisted that the [Boxer] payments be made in gold francs at the prewar rate of exchange between the Franc and the silver tael," the Chinese delegates adamantly refused.⁵⁷ Supported by Belgium and Italy, France, as Iriye notes, "would not ratify the customs treaty unless the Chinese accepted the French interpretation of the Boxer question."⁵⁸ By the time the French request was granted by the Peking government in 1925, the agreements reached at Washington were becoming less attainable.

While the Powers delayed implementing the Nine Power Treaty, strongmen in China continued to undermine any semblance of a governmental structure, thereby making the abolition of extraterritoriality impossible. Chang Tso-lin and his Fengtian clique in Manchuria, Wu P'ei-fu's Chihli faction in Peking and Dr. Sun's Kuomintang party all attempted to extend their power within China proper. In 1922 the contenders for power within China were forced to fight, as Lucian Pye points out, "without any direct support from the other dissident groups within China."⁵⁹ The result was that each faction had to vie for foreign support.

⁵⁶ Ibid., 34.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Lucian W. Pye, Warlord Politics (New York: Praeger Publishers, 1971), 83.

During the summer of 1922, Japan, by aligning with Chang Tso-lin, became directly involved in the military conflict in China. Chang Tso-lin sought Japanese assistance in extending his influence southward into Peking. Yet his efforts were thwarted by "civilian officials who favored nationalization, economic developmental policies and permanent long-term withdrawal" from the war between the warlord factions.⁶⁰ Chang failed to realize that Chinese nationalism and anti-foreignism were directed against Japan and for the time being he was restricted to the three eastern provinces of Manchuria. While Japan supported Chang, both the United States and Britain continued to support Wu Pei-fu's government in Peking, in part to counter Japan's growing influence within China.

In their struggle against warlords like Chang and Wu, the Kuomintang and its Communists allies effectively used propaganda as a political device. The Bolsheviks in Russia, guided by their leader Lenin, understood and capitalized upon the growing nationalism within China. Lenin, the key player during the Bolshevik revolution of 1917, advocated a theory of imperialism which would prove significant to China. This theory held that although revolution could only be achieved in fully capitalistic countries, nationalism had a role to play and could be exploited in developing countries like China. Excess capital in Western countries had caused, as Robert C. North wrote, "an enormous superabundance of capital, much more than" could be "invested profitably at home" and had

⁶⁰ Gavan McCormack, Chang Tso-lin in Northeast China, 1911-1928 (Stanford: Stanford University Press, 1977), 76.

spurred imperialistic expansion.⁶¹ Since the capitalistic countries, such as Japan, Britain and the United States, had invested heavily in countries such as China, nationalism could be used to foster an anti-foreign agitation, ultimately leading to world revolution. Furthermore, since the treaty system was still in place and extraterritoriality was enjoyed by the other Powers, the Soviet Union had, as Odoric Y.K. Wou pointed out, "an opportunity to exploit the situation in its bid for power in China."⁶²

Yet Dr. Sun realized that Soviet support could be critical in his efforts to achieve the reunification of China. Therefore, agents of Russia, whom historians C. Martin Wilbur and Julie Ling-ying How described as "missionaries of revolution," were sent to Canton to aid both the Chinese Communist Party, which had been formed in 1921 by Ch'en Tu-hsiu, and the Kuomintang.⁶³ The first of these missionaries was Adolf Joffe and he was followed by Communist International (Comintern) agent Mikhail Markovich Borodin.

In 1922, as the Fengtian and Chihli factions were vying for power in Peking, Dr. Sun recognized that he did not have the support of the Western Powers. Therefore, he decided to enlist the support of Communist Russia,

⁶¹ Robert C. North, Moscow and Chinese Communists (Stanford: Stanford University Press, 1953), 13.

⁶² Odoric Y. K. Wou, "The Chinese Communist Party and the Labor Movement: The May 30th Movement in Henan," Chinese Studies in History 23 (Fall 1989): 85.

⁶³ C. Martin Wilbur and Julie Lien-ying How, Documents on Communism, Nationalism, and Soviet Advisers in China 1918-1927 (New York: Columbia University Press, 1956), 12.

despite the fact he did not believe in the Soviet system. On the latter point,

Chiang Kai-shek noted in his memoirs:

Dr. Sun holds that neither the Communist social order nor the Soviet system can actually be introduced into China because there do not exist here the conditions for the successful establishment of either Communism or Sovietism.⁶⁴

Adolf Joffe, a Soviet Advisor on a diplomatic mission representing Russia, arrived in Peking in August of 1922 to establish diplomatic relations with Peking and to counter Japanese expansion in Manchuria. Initially he negotiated with Chinese Foreign Minister Dr. Wellington Koo. When Dr. Koo demanded "Soviet evacuation of outer Mongolia" as well as relinquishment of the Boxer indemnity of 1900, Joffe realized it would be in the best interest of Soviet Russia to align with Dr. Sun. Since the primary goal of Dr. Sun was the reunification of China, the issue of Russian presence in such peripheral areas as Manchuria and Outer Mongolia was secondary.

Consequently, Dr. Sun and Joffe reached an agreement in January of 1923, known as the Sun-Joffe agreement, which stated that "the chief and immediate aim of China" was "the achieving of national unity and national independence" and that "China would find the warmest sympathy of the Russian people and could depend on the aid of Russia."⁶⁵

⁶⁴ Chiang Kai-shek, Soviet Russia in China: A Summing-Up at Seventy (New York: Farrar, Straus and Cudahy, 1957), 16.

⁶⁵ Daniel Norman Jacobs, Borodin: Stalin's Man in China (Cambridge: Harvard University Press, 1981), 27.

Once this agreement was reached, Dr. Sun, as Wilbur and How noted, "thought of Soviet Russia as a source of military aid in his plans to capture Peking."⁶⁶ In 1922 the Comintern, an organization established by Russia to pursue world revolution, decided that the most effective way to achieve its goals in China would be through revolutionary means.

Borodin had been recruited by the Comintern in 1920 and sent to England, where postwar depression had created unemployment among workers. "The government [sought] to minimize its involvement in [the] rapidly worsening situation" and turned "the wartime nationalized coal mines back to the owners" Borodin's biographer explains.⁶⁷ When the workers demanded equalization of wages, the owners refused. In attempting to organize agitation within the union Borodin came under suspicion by Scotland Yard. Ultimately he was arrested and deported in February 1923.

Although his assignment in England did not achieve the desired results, he had become a trusted agent by proving his faithfulness to the goals of the Comintern. In China, working in conjunction with Dr. Sun, Borodin would attempt to change the structure of the China from the bottom up through mobilizing the working class, a strategy that added to the chaos in the country.

⁶⁶ Wilbur and How, Documents on Communism, Nationalism, and Soviet Advisers in China 1918-1927, 55.

⁶⁷ Jacobs, Borodin: Stalin's Man in China, 97.

By October of 1923 Borodin became Dr. Sun's close advisor "helping to reshape the Kuomintang and provide it with a military ideology."⁶⁸ By aiding the establishment of a military academy Borodin was able to disseminate Bolshevik propaganda to the military class. When the Whampoa Military Academy was expanded after its founding in 1923, one of the training goals became the indoctrination of its recruits. As historian Donald Jordan noted, "the Whampoa Academy had been created to provide the nucleus for the Party Army" and was thus "tied to the ideology of Bolshevism."⁶⁹ An effective anti-imperialistic tool was the use of didactic speeches intended to stir the emotions of the recruits. The following speech made by Chiang at the academy demonstrates this tactic:

. . .on examining the world today, we find workers everywhere who are the real force of the Revolution, for every worker is opposed to military force. Even though our revolution may not be victorious at the moment, this is only a temporary phenomenon. It is only right that our revolution should succeed. Like the venomous snake which is endowed with a beautiful lady's feet to tempt the weak and secure their obedience, the imperialists are employing clever and tricky tactics in China to cause our countrymen to kill one another for their profit.⁷⁰

By 1924 anti-imperialism and the abolition of the treaty system became, MacMurray declared, "the cardinal doctrine of his [Dr. Sun's] system for the rejuvenation of China."⁷¹

⁶⁸ Wilbur and How, Documents on Communism, Nationalism, and Soviet Advisers in China 1918-1927, 6.

⁶⁹ Donald A. Jordan, The Northern Expedition: China's National Revolution of 1926-1928 (Honolulu: The University of Hawaii Press, 1976), 22.

⁷⁰ Wilbur and How, Documents on Communism, Nationalism, and Soviet Advisers in China 1918-1927, 178.

⁷¹ MacMurray, How the Peace Was Lost, 69.

Under these circumstances, the agreement reached at Washington was beginning to fall apart. As Iriye noted,

the Washington signatories had failed to respond constructively to the continuing civil war and spreading disorder in China, while Russian officials and Comintern agitators worked assiduously to enter the vacuum and create a new order at the expense of the Washington Powers.⁷²

Although the Nine Power Pact had not as yet been ratified due to the gold franc dispute, the Powers continued to recognize the legitimacy of the Peking government.

By 1924 the tensions between the warlords had erupted into the Chihli-Fengtien War which altered both the internal and external power structure. Japan, seeking to block Soviet designs in Manchuria and Outer Mongolia, strengthened its relationship with warlord Chang Tso-lin and the Fengtien coalition. Chang, with the backing of Japan, in an attempt to extend his influence further South, began to attack Marshal Wu P'ei-fu whose Chihli faction controlled the Peking government.

Initially, Chang Tso-lin achieved a series of victories due to an alliance formed with a new ally Feng Yu-chang.⁷³ This alliance, according to Odoric Y. K. Wou, "radically altered the power structure in North China."⁷⁴ While Britain continued to operate within the framework of the Washington Conference by

⁷² Iriye, After Imperialism: The Search for a New Order in the Far East 1921-1931, 55.

⁷³ McCormack, Chang Tso-lin in Northeast China, 1911-1928, 130.

⁷⁴ Wou, "The Chinese Communist Party and the Labor Movement: The May 30th Movement in Henan," 77.

refusing, as Arthur Waldron noted, "to participate in efforts to mediate" and ruled "out any military intervention," Japan involved itself in China's internal power struggles.⁷⁵

Gavan McCormack described Teranishi Hidetake's involvement in Chinese internal affairs. When this reserve army colonel heard that war had broken out he sought to get Tuan Chi-jui, President of China, "to join the anti-Chihli war, arranging a meeting between Tuan and Chang"⁷⁶ Japan's involvement threatened the power structure established at the Washington Conference. Yet the conference had also ensured Japan's special economic interests in Manchuria, so Japan viewed the instability in China as a threat to its interest.

The alliance between Feng and Chang made possible a Fengtien victory. Marshall Wu-P'ei-fu retreated on November 3, 1924. Yet his troops remained loyal to him and converged upon Peking. Ultimately, it was Feng's Chinese troops, not those of the foreigners, who disarmed Wu's troops. With the collapse of the Peking government, according to Waldron, "chaos loomed both internally and externally."⁷⁷ The outcome of the war left a shadow government in Peking which the Powers were committed to dealing with and further strengthened Japan's hold on Manchuria.

⁷⁵ Arthur Waldron, From War to Nationalism: China's Turning Point, 1924-25 (Cambridge: Cambridge University Press, 1995), 162.

⁷⁶ McCormack, Chang Tso-lin in Northeast China, 1911-1928, 131.

⁷⁷ *Ibid.*, 213.

By 1925 the power structure had been completely altered and the Washington agreements had become, to use Akira Iriye's expression, a "lost opportunity." A competing triangular relationship had emerged. Japan had extended its influence through Chang Tso-lin, protecting its interest in Manchuria. The government in Peking had all but been destroyed by Chang. Yet this shadow government, now controlled by Feng, was the one with which the Washington Powers had committed themselves to negotiate. Finally, Soviet influence was, as Ferdinand Mayer, the American chargé in Peking, observed, "very strong if not dominant" and the Soviets were "working chiefly through the Kuomintang Party."⁷⁸

Furthermore, because France had not resolved the gold franc dispute with China, the Commission on Extraterritoriality promised in the Nine Power Treaty continued to be delayed. Chinese nationalists saw this as confirmation of the Powers' continued unwillingness to recognize China's right to sovereignty. An event would occur on May 30, 1925 which would intensify this sentiment.

⁷⁸ Iriye, *After Imperialism: The Search for a New Order in the Far East 1921-1931*, 43.

CHAPTER 4

THE MAY 30TH INCIDENT AND MINISTER J. V. A. MACMURRAY'S ARRIVAL IN CHINA

During the Chihli-Fengtien war of 1924 the Chinese government had been exposed as weak. While the Powers were still committed to the Nine Power Treaty they "sought reconfirmation of their privileges while dragging their feet over matters already agreed to," such as the Commission on Extraterritoriality.⁷⁹ Linking foreign domination with the weak and ineffectual warlord-backed government in Peking, Dr. Sun's Kuomintang, with the help of the Bolshevik advisors, stirred up nationalist sentiment. In line with the Three Principles of the People (nationalism, democracy and socialism) Dr. Sun attempted to demonstrate that the foreign Powers not only stood in the way of Chinese nationalism but also "sustained the activities of the [warlord] generals who had just laid waste to important sections of the Country."⁸⁰ Although Dr. Sun died on March 12, 1925, his followers would continue to propagate this message.

Hendricus Sneevliet, (alias Maring) who had been "a Comintern operative," as historian Michael Hunt notes, attempted to form an alliance with the Kuomintang to further Communist goals in China.⁸¹ Yet as a result of Sun's death Chiang Kai-shek emerged as the leader of the Kuomintang. Chiang would

⁷⁹ Arthur Waldron, From War to Nationalism: China's Turning Point, 1924-25 (Cambridge: Cambridge University Press, 1995), 250.

⁸⁰ *Ibid.*, 251.

⁸¹ Michael Hunt, The Genesis of Chinese Communist Foreign Policy, (New York: Columbia University Press, 1996), 86.

concentrate on capturing Peking while the Communist elements within the Kuomintang would continue to propagate Soviet doctrine.

Because the Powers were committed to the Washington treaties, they were obligated to the weak military regime in Peking. Dr. Sun's Kuomintang became a symbol of hope for nationalistic Chinese who recognized the decay of their country both internally and externally. As Joseph Schurman, the American Minister to China, reported on February 5, 1925: the "Powers are accused of intrigue with military government in opposition to the Sun Yat-sen regime; the United States accused of landing marines at Nanking for alleged purpose of aiding the military."⁸² The Kuomintang and the Communists, as Iriye noted,

clandestinely made contact with Chinese workers in foreign owned factories, organized them, disseminated Marxist propaganda and directed strikes against such abuses as the beating of laborers, long working hours, employment of children and poor dormitory conditions.⁸³

The Bolshevik influence was extended to the factories of Shanghai. The alliance between the Communist element and the Kuomintang allowed for the formation of a labor movement. Japanese cotton mills had been the target of labor strikes since Japan received Shantung at Versailles after World War I. Political scientist Elizabeth Perry wrote that "the strengthening of the United Front under tighter CCP control naturally enhanced the capacity of Marxist

⁸² United States, Department of State, Papers Relating to the Foreign Relations of the United States 1925, (Washington: Government Printing Office, 1940), 725. Hereafter cited as FRUS, 1925.

⁸³ Akira Iriye, After Imperialism: The Search for a New Order in the Far East 1921-1931 (Cambridge: Harvard University Press, 1965), 58.

organizers to lead the labor movement in directions amenable to their political designs."⁸⁴ Union leagues were formed to enhance this patriotic movement and to gain political strength. As Waldron observed:

activists founded a local Executive Committee of the Socialist Youth League and a Local Executive Committee of the CCP. The former concentrated on student work, while the parties executive committee assigned cadres, usually from an international background, to organize railroad workers, printers, dockworkers, and mill operatives.⁸⁵

During May of 1925 strikes had been organized by the Japanese Cotton Mills Union. Ultimately, through these strikes the strong sense of nationalism, which had been simmering beneath the surface, exploded when Ku Cheng-hung was killed by a foreman in a Japanese factory on May 15, 1925. The Communists, who were well aware of the humiliation the Chinese people had suffered at the hands of the Japanese, "generated an outpouring of sympathy for the labor martyr," as Perry states.⁸⁶ As a result of the killing, the educated elite of Chinese society, in MacMurray's words: "burst into a furious anti-foreign feeling, and indulged in a frenzy of racial self-assertion against what they claimed to be the stigma of inferiority imposed on them by the existing treaty system."⁸⁷

⁸⁴ Elizabeth J. Perry, Shanghai on Strike (Stanford: Stanford University Press, 1993), 80.

⁸⁵ Waldron, From War to Nationalism: China's Turning Point, 1924-25, 250.

⁸⁶ Perry, Shanghai on Strike 80.

⁸⁷ John Van Antwerp MacMurray, How the Peace Was Lost: The 1935 Memorandum Developments Affecting American Policy in the Far East, edited and with Introduction and Notes by Arthur Waldron. (Stanford: Hoover Institution Press, 1992), 71.

Ultimately this led to new strikes against the British and Japanese, who were viewed as the worst imperialists.

On May 30th students joined with the strikers to protest against the killing of Ku Cheng-hung and converged upon the Louza police station in the International Settlement, demanding treaty revision as well as the abolition of extraterritoriality. Approximately a dozen students were killed when the British police "opened fire on the unarmed demonstrators."⁸⁸ This event came to be known as the May 30th Incident.

When the killing of the Chinese students became known to United States Consul General Edwin S. Cunningham, he justified the actions of the British police. The following is the version he sent to the Secretary of State, Frank B. Kellogg, on May 31, 1925,

Yesterday students from local schools and strikers from Japanese mills began [an] organizing tour of speech making and parade in international settlement protesting against killing of Chinese laborers in Japanese mill, [and]prosecution of strikers in the Mixed Court. . . The police ordered discontinuance was ignored, whereupon several leaders were arrested and taken to Louza police station on Nanking Road. Soon the students became a threatening mob assaulting 2 foreign police constables, completely held up traffic on Nanking Road and finally attempted to force an entrance to Louza police station threatening the lives of foreigners. The order was given to fire and 3 were killed, 6 others succumbed last night and probably some 20 others wounded. The police are considered to have acted in the only possible way consistent with the situation. The mob distributed violent circulars of Bolshevik character proclaiming that present conditions were due to the imperialism of Great Britain, United States, Japan, the Anti-Japanese circulars being strongest in language and most numerous.⁸⁹

⁸⁸ Stephen Lyon Endicott, Rebel Out of China (Toronto, Buffalo: University of Toronto Press, 1980), 88.

⁸⁹ FRUS, 1925, 647.

A conflicting version was relayed to the Italian Minister in China, Cerruti, by the Chinese Minister for Foreign Affairs. The translation is as follows:

Following the arrest of students and acts of violence against Chinese workmen, several of whom were wounded, a certain number of students from different universities of Shanghai went, in the afternoon of May 30th last, to the police station of the international concession as a sign of protest and made speeches. The armed intervention of the police resulted in the arrest of more than forty students, four students being killed on the spot, six students being seriously wounded two of whom succumbed shortly thereafter, and seventeen passers-by being wounded three of whom died later. In learning with emotion of the fact mentioned above, I beg leave to state that whatever may be the character of their demonstrations, the students who are young men of good family, very patriotic and unarmed, cannot, in any case, be treated as ordinary malefactors and that instead of quieting them by appropriate means, the Police resorted to extreme means which are essentially condemned by humanity and justice. I find myself, therefore, absolutely obliged to address to Your Excellency the most formal protest, reserving the right to make, as soon as subsequent reports giving complete details reach me, all the claim which will result from this deplorable incident, for which the authorities of the Concession are entirely responsible.⁹⁰

Even though the protests by the Chinese students and workers had been Bolshevik-inspired, the killing of Ku and the twelve demonstrators united the majority of Chinese behind them. The direct result was an intense anti-foreign movement which extended to all sectors of society. Furthermore, the foreign Powers, excluding the Soviet Union, which no longer had any rights within the International Settlement, appeared intent on maintaining their positions. It became evident after the May 30th Incident that extraterritoriality represented a justice system which did not hear the voices of the Chinese people. Ultimately

⁹⁰ Ibid, 648.

the actions of the foreign police that day undermined the Washington Powers' influence within China and left an opening for the Communists to fill. The only hope for a return to a pre-May 30th normalcy would have been for the foreign Powers to demonstrate their good faith by holding Chief of Police Kenneth John McEuen entirely responsible for the events which had occurred on May 30th. Yet the Powers moved too slowly and Chinese nationalist sentiment continued to intensify.

As Kuomintang agitators fanned the flames of nationalist sentiment, in addition to workers, students also became a strong element in the movement. Since 1924 they had been protesting against what they perceived as Western domination within the schools. At the forefront of such domination were the missionaries, yet Yale-In-China, under the leadership of Edward H. Hume, was in the vanguard of educational change. The Chinese students who attended Yale-In-China met with other students to discuss educational reform. Finally, as Lian Xi noted,

a series of minor incidents in Christian schools led to a declaration at the August 1924 national conference of the Students' Union calling for the restoration of educational rights to the Chinese, elimination of religious propaganda in schools, and removal of foreign control of schools.⁹¹

This was soon followed by "student walkouts and withdrawals from missionary schools."⁹² When the killing of Ku Cheng-hung occurred the students

⁹¹ Lian Xi, The Conversion of Missionaries: Liberalism in American Protestant Missions in China, 1907-1932 (University Park, Pennsylvania: The Pennsylvania State University Press, 1997), 49.

⁹² Ibid.

recognized the need to form a unified movement with the strikers against foreign domination. With “students in Christian schools joining those of government institutions in the nationwide protest over the May 30th incident, Christian Unions were formed to add their voices to the demand for justice,” according to historian Kenneth LaTourette.⁹³ The New York Times reported on June 8 that students demanded

that Japan change her Tsingtao and Shanghai consuls; second, that Japanese employees in Shanghai be punished; third Japan pay indemnities for the casualties, fourth, that the Shanghai concession be restored to China and fifth that extraterritoriality be abolished.⁹⁴

Furthermore, these students also reacted strongly against Christian missions since they were viewed as enjoying special privilege in China. H. A. Giles, president of the Chinese Cambridge University reported that, “there can be no doubt now of the existence of a strong reaction in China against any further teaching of Christianity. “The cry of ‘down with the religion of Jesus’” became a battle cry of the students.⁹⁵ His was not the only college affected. As Lian Xi noted, “at Foochow College students posted three demands: voluntary attendance at religious services, optional Bible study, and registration of the college with the Chinese government.”⁹⁶

⁹³ Kenneth Scott LaTourette, A History of Christian Missions in China (London: Society for Promoting Christian Knowledge, 1929), 812.

⁹⁴ New York Times, 8 June 1925.

⁹⁵ *Ibid.*

⁹⁶ Lian Xi, The Conversion of Missionaries, 49.

Students became the most articulate group within China calling for treaty revision and the abolition of extraterritoriality and they were able to form a strong unifying sentiment against foreign control. When the students protested, the Literary Digest reported that "they called for a boycott of British and Japanese goods and loans, and also demanded that no goods be sold to British and Japanese."⁹⁷ Thus the International Settlement was besieged with strikes and demonstrations, with the strongest voice being that of the student population. As the strikes gained momentum within the International Settlement the revolutionary movement in Canton also picked up steam.

It was from Canton that both the Kuomintang and Communists were able to exploit the anti-foreign movement through the use of money and propaganda. Money to support the strikes poured in from all major cities of China, gathered by a great variety of Chinese organizations and patriotic contributors:

During June a relief committee organized by the Chinese General Chamber of Commerce distributed \$4,709,000 and after the strike was over the chamber announced that it had received \$2,200,000. The Communist-controlled Shanghai General Labor Union distributed \$350,000 in June.⁹⁸

Banks and merchant associations were compelled to "issue patriotic bonds [and] to raise money to absorb the striking workers," as Odoric Y. K. Wou noted.⁹⁹ The

⁹⁷ Literary Digest, 20 June 1925.

⁹⁸ Martin C. Wilbur and Julie Lien-ying How, Documents on Communism, Nationalism, and Soviet Advisers in China 1918-1927 (New York: Columbia University Press, 1956), 151.

⁹⁹ Odoric Y. K. Wou, "The Chinese Communist Party and the Labor Movement: The May 30th Movement in Henan," Chinese Studies in History 23 (Fall 1989): 80.

strikers were often motivated by Dr. Sun's Three Principles of the People which were taught at the Whampoa military academy.

As the strikes began adversely affecting business, the reaction of the American State Department to the strikes was one of indignation. Ferdinand Mayer, the U. S. Chargé d'Affaires, referred to the Chinese Chamber of Commerce as "spineless" when it refused to "withdraw [from the] strike[s]" as they continued in the aftermath of the May 30th Incident.¹⁰⁰ The Powers were forced to rely upon the warlords to maintain order. In addition to the 4,000 Fengtien troops under the control of General Chang Tso-lin required to keep order in Peking, journalist Hewlett Hughes reported in Current History that:

American troops, in concert with those of the other foreign Powers in China, are helping to maintain law and order in the disturbed districts, and conditions are still susceptible of development of the gravest character. This manifestation of anti-alien sentiment has not come as a surprise to foreigners in China.¹⁰¹

Thus events immediately following the May 30th Incident virtually shut down foreign-controlled business within China. Many foreigners laid the blame on Bolshevik ideology. Hughes declared: "Russia's general policy of world revolution, to convert the Chinese people to Bolshevism" and to "move against Japan" would ultimately threaten the existing international order.¹⁰²

¹⁰⁰ FRUS, 1925, 677.

¹⁰¹ Hewlett Hughes, "China in Anti-Foreign Mood," Current History 22 (April - September 1925): 619.

¹⁰² *Ibid.*

What occurred next in Washington brought the Chinese anti-foreign movement to center stage of the world arena. On June 26, 1925, the Chairman of the Foreign Relations Committee, Senator William E. Borah, made a bold statement in support of Chinese nationalism. As the Washington Post reported on June 28th, Borah declared that the American Chamber of Commerce was "the real cause of the trouble" in China. Furthermore, Borah struck at the heart of the trouble when he accused the Powers of not granting the Chinese "the rights and respect" they deserve as "they were defined in the disarmament conference."¹⁰³ In addition, he also suggested that had the Washington agreement been implemented "there would be not trouble in China with [the] foreign Powers."¹⁰⁴

To understand what would cause a Chairman of the Foreign Relations Committee to make such a statement some background on William E. Borah is necessary. Borah was elected to the U.S. Senate from Idaho in 1907 and became a strong force. Although a member of the Republican Party, Borah displayed individualistic characteristics which separated him from many colleagues. Borah distrusted, as columnist Walter Lippmann put it, "formality and collective red tape" and relied "upon direct speech, common knowledge, individual salvation and his own concept of the sovereign ownership of the moral law."¹⁰⁵ As an isolationist, Borah had little interest in supporting the international

¹⁰³ Washington Post, 28 June 1925.

¹⁰⁴ *Ibid.*

¹⁰⁵ Walter Lippmann, "Concerning Senator Borah," Foreign Affairs 4 (January 1926): 212.

status quo. In addition, he "distrust[ed] strong government" and, as his biographer LeRoy Ashby noted, "rejected state imposed programs" in favor of activity "which was private, voluntary, [and] non-bureaucratic."¹⁰⁶ When Borah became chairman of the Foreign Relations Committee he sought to bring the ideas of non-interventionism into the international arena since he believed that, "the foreign Powers needed to adjust their policies to the fact that Chinese nationalism was powerful and would not go away."¹⁰⁷ Yet non-interventionism was in direct conflict with the goals of the Powers in China.

Furthermore, in the heyday of anti-Bolshevism in America, Borah viewed the "regime in Russia as only a momentary manifestation of the Russian people's quest for national identity."¹⁰⁸ As such Borah believed that was not the role of the United States to "tell Russia what kind of government to establish."¹⁰⁹ During the 1920s Borah took the lead in advocating the recognition of Russia and filed a "resolution for such purposes during the first session of every Congress."¹¹⁰ Although naive about the extent of Bolshevik influence within China, Borah's sincerity cannot be doubted. Furthermore, he recognized, and

¹⁰⁶ LeRoy Ashby, The Spearless Leader: Senator Borah and the Progressive Movement in the 1920's (Chicago: University of Illinois Press, 1972), 111.

¹⁰⁷ Robert David Johnson, The Peace Progressives and American Foreign Relations (Cambridge: Harvard University Press, 1995), 147.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

spoke out strongly against, the "Chamber of Commerce as well as the Powers [who] held imperialistic designs which would oppress and exploit the Chinese people."¹¹¹

When news of Borah's statement reached China, a Professor at Peking University responded in the Min Pao on June 27:

You have rightly diagnosed, as the cause of the present unhappy state of things in China, the clash between the national aspiration of the Chinese people and the blood and iron policy some of the treaty Powers in China (of which Great Britain and Japan appear to be the protagonists) to crush every attempt of our people to free themselves from the enthrallment of foreigners.¹¹²

Although Senator Borah obviously added to the nationalistic sentiment by his statements to the press, he stood by them. As the Peking Leader noted on July 1, 1925, "in spite of adverse criticism" Borah continued to demand "the abolition of extraterritoriality by the Powers in China."¹¹³

In addition to Senator Borah, there were missionaries who supported Chinese nationalism. Many of the missionary groups had realized, even prior to the May 30th Incident, that Chinese students no longer found Christian doctrine palatable. Their stance was understandable because in recent decades, as Lian noted, "the traditional missionary impulse to save the heathen through the preaching of the Gospel became submerged in institutional programs dedicated to social, educational, and health reforms." With the emphasis upon the social

¹¹¹ Washington Post, 28 June 1925.

¹¹² Min Pao, 27 June 1925.

¹¹³ Peking Leader, 1 July 1925.

and intellectual needs of the Chinese, "a new and more liberal theology transported from home, seemed increasingly ready to collaborate with rather than tear down Chinese religions."¹¹⁴ Given the new framework in which the missionaries were operating it is understandable that many of them supported Chinese nationalism.

An example of one such missionary group was the Peking Fellowship of Reconciliation which, in a statement on June 10, 1925, advocated treaty revision and the abolition of extraterritoriality as necessary to create an "atmosphere of real friendship" within "the Christian world."¹¹⁵ Furthermore, the statement demanded that the foreign community take two steps towards implementing Chinese demands:

(1) A frank statement at this time from our governments of their willingness to take immediate steps toward the revision of unequal treaties, including a removal of extraterritoriality.

(2) The withdrawal of foreign troops from China.¹¹⁶

In point one, the group, like Senator Borah, essentially requested the fulfillment of the agreements set forth at the Washington Conference. Yet due to the intensity of the strikes, especially where missionary property was affected, all

¹¹⁴ Ibid.

¹¹⁵"Foreigners in New China: A Statement Concerning the Present Situation adopted June 10 1925 by the English speaking branch of the Peking Fellowship of Reconciliation", United States, Department of State, Records Relating to Political Relations Between China & Other States 1910-1929, (Washington: National Archives Microfilm Publications, 1960) Reel 3.

¹¹⁶ Ibid.

missionary groups did not support the abolition of extraterritoriality and special privilege within China.

As the State Department confronted the complexities of the situation in June 1925, boycotts against foreign goods, especially those of Japan, had increased and continued to threaten foreign interests within China. Chinese students and workers, as well as Bolshevik organizers, began to undermine foreign control in China as movement became increasingly radical and threatened foreign property and lives, especially in Canton, where both nationalism and Bolshevism were strong.

Ferdinand Mayer, Chargé d'Affaires in Canton, recommended a quick resolution to the May 30th Incident as the best means to alleviate the chaos and dampen the anti-foreign demonstrations. He warned in a dispatch of June 30th to the Secretary of State:

According to the semiofficial Canton Gazette seamen's strike will begin in Canton and Hong Kong June 15th in Sympathy with Shanghai students. This will undoubtedly become [a] serious general strike if the Shanghai affair is not settled soon.¹¹⁷

As the agitation in Canton continued to grow, the student demonstrations included slogans such as "kill foreigners" and stones were thrown at an American missionary hospital.¹¹⁸ Mayer blamed the disorder, at least in part,

¹¹⁷ FRUS, 1925, 743.

¹¹⁸ *Ibid.*

on Whampoa Military Academy cadets. In fact, in a letter to General Vasilii K. Bliukher, who was referred to as General Galen, a Russian adviser to the Whompoa Military Academy, Chiang Kai-shek advocated "military preparations against foreigners and requested the assistance of "Russian advisors."¹¹⁹ However, Acting Secretary of State Joseph Grew instructed Mayer to "await the arrival of Minister MacMurray, at Peking" before seeking a resolution to the May 30th Incident.¹²⁰

MacMurray arrived in China in July 1925. Born in 1881 and educated at Princeton, MacMurray had extensive experience as a diplomat. He entered the Foreign Service in 1907, served as counselor in Tokyo in 1917 and as Chargé in Peking in 1918, after which he became Chief of the Far Eastern Division of the State Department until his appointment as minister to China in June of 1925.¹²¹ MacMurray would attempt to work for treaty revision within the framework of the Washington Conference, while at the same time seeking to maintain the existing international order.

MacMurray sympathized with the Chinese desire to rid their country of extraterritoriality, citing the practice as a "bad thing," but he recognized the fact that a "proper substitute must be found."¹²² MacMurray expected that the

¹¹⁹ Wilbur and How, Documents on Communism, Nationalism, and Soviet Advisers in China 1918-1927, 502.

¹²⁰ FRUS, 1925, 677.

¹²¹ MacMurray, How the Peace Was Lost, 10.

¹²² Lecture by Mr. John Van Antwerp MacMurray to the Foreign Service School, May 28, 1925, Box 219, John Van Antwerp MacMurray Papers, Seeley Mudd Library, Princeton University.

Commission on Extraterritoriality would examine the situation, "make recommendations and indicate some lines along which progress might be made." Although the Washington Treaties had not as yet been implemented, MacMurray stood by them. However, he viewed the nationalistic sentiment in China as "Bolshevik inspired" and the cause of a "denunciation of treaties" which had had a negative impact upon trade in China.¹²³

In addition to MacMurray's view of nationalism as being Bolshevik inspired, he also had a high regard for Japanese economic development in contrast to the disarray within China. In a speech to the Foreign Service School in May 1925 MacMurray had described the difference between the countries of Japan and China in this fashion:

The Japanese instead of leaving foreigners to develop economic trade relations, definitely took matters into their own hands. They tolerated foreigners -- gave certain residential concessions, made use of foreigners in development of Japanese commerce and industry -- but [the] whole general course of development in Japan was that Japanese made use of foreigners so long as they were useful to help Japanese develop their own systems -- deliberately made use of foreigners but quite definitely set themselves to train their own people to become a state organized like Western states on its side and control of new situation that had been created by contact with [the] West, whereas China drifted before [the] wind and are even yet drifting about and only now and then starting up a rather feeble motor engine in hope of staying wind. Japan developed itself [while] China left its interest to be developed by foreigners. China therefore, constitutes the bulk of the problem in the Far East.¹²⁴

¹²³ Ibid.

¹²⁴ Ibid.

Such pro-Japanese sentiment had caused a reaction against MacMurray's appointment to Minister of China. Reverend Hugh H. White, of the American Presbyterian Mission, in a letter to MacMurray stated: "I am one who thinks your appointment a mistake" and faulted MacMurray for not realizing that the Japanese were attempting to "get a strangle hold on China" and for viewing Japanese designs as purely "commercial." Reverend White, however, chose to support MacMurray when he realized that the threat of Bolshevism was worse than Japanese aggression and consequently pledged his support to fight what he termed "preacher pacifists in America."¹²⁵

Once MacMurray arrived in China he was faced with the arduous task of participating in the resolution of the May 30th Incident, as well as laying groundwork for the Commission on Extraterritoriality. Meanwhile, sentiment against special privilege in China continued to grow. Letters in support of Chinese nationalism continued to flood Washington between the months of July and September 1925. President of the American Federation of Labor, wrote on July 10 "that the abolition of extraterritorial rights of foreigners [was] necessary to China's administrative integrity and sovereignty."¹²⁶ A letter from Harlen M. Frost

¹²⁵ MacMurray to White, July 6, 1925, Box 75, John Van Antwerp MacMurray Papers, Seeley Mudd Library, Princeton University.

¹²⁶ "American Federation of Labor", July 10, 1925, United States, Department of State, Records Relating to Political Relations Between China & Other States 1910-1929, (Washington: National Archives Microfilm Publications, 1960) Reel 3.

of the Second Baptist Church in Toledo, Ohio on September 17th advised "pushing through to action these commitments of the Washington Conference."¹²⁷

MacMurray realized that Chinese anti-foreign sentiment would not be easy to eradicate, although in an August 8th dispatch to the Secretary of State he suggested that resolving the May 30th Incident would turn the tide of nationalism. Consequently, the problem became how "to relieve the tense situation" caused by the May 30th Incident in Shanghai.¹²⁸ While Kenneth John McEuen's resignation as chief of the international police would have helped, London opposed this course of action on the grounds that it would cause the Chinese to complain that "justice" had "been defeated by allowing him to resign beforehand and thus escape dismissal."¹²⁹

The press continued to report the dissatisfaction of the Chinese government. The Peking Daily News on September 28, 1925 reported that the Ministry of Justice, in response to the Shanghai Incident, believed extraterritoriality was:

incompatible with the principles of humanity and that consular jurisdiction was the main cause of these incidents. It says that the law of the world is that one who kills another is liable to be executed, but owing to extraterritorial privilege a foreigner who kills Chinese is likely to be defended rather than punished, and therefore, it says, the present system is nothing but an encouragement to kill.¹³⁰

¹²⁷ "The Second Baptist Church", September 17, 1925, United States, Department of State, Records Relating to Political Relations Between China & Other States 1910-1929, (Washington: National Archives Microfilm Publications, 1960) Reel 3.

¹²⁸ FRUS, 1925, 693.

¹²⁹ *Ibid.*, 696.

¹³⁰ Peking Daily News, 28 September 1926.

Since trust between the Powers and the Chinese hinged upon implementation of the Nine Power Treaty, France's ratification of the treaty in August of 1925 made it "mandatory" for the Powers to organize the Commission on Extraterritoriality.¹³¹ Resolution V of the Washington Treaty established the basis for the Commission to examine the practice of extraterritoriality.

Yet as strikes and hostilities towards foreigners continued, opposition to the relinquishment of extraterritoriality increased. As the New York Times reported on August 17, "foreigners in China believe that extraterritoriality gives protection to their business here."¹³² Even some missionaries began to realize extraterritoriality was necessary to ensure the safety of foreign lives. The Peking and Tientsin Times declared on August 22 that, "in the present situation" it would be "absolutely fatal to most of the work that has been built up during the past decades" to get rid of extraterritoriality.¹³³ By August even Senator Borah had begun to realize that his comments had been "hasty" and he now advocated gradually "ending extraterritoriality."¹³⁴ Thus the situation in China, as it pertained to treaty obligations, was becoming increasingly complex.

¹³¹ Iriye, After Imperialism: The Search for a New Order in the Far East 1921-1931, 69.

¹³² New York Times, 17 August 1925.

¹³³ Peking and Tientsin Times, 22 August 1925.

¹³⁴ Washington Post, 20 August 1925.

Another factor adding to the complexity was the continued civil war within China. As Iriye explained:

the Tuan [Ch'i-ju] regime had been dependent upon the alliance of Chang Tso-lin and Feng Yu-hsiang, but the latter's allegiance was always shaky and his Kuominchun (National Army) had a hand in encouraging the unsuccessful revolt by Kuo Sun-lin against Chang toward the end of 1925.¹³⁵

By November 10, fighting between warlords began to escalate. The London Times reported:

North of the Yangtse there is the Chang Tso-lin interest including seven Tuchuns [military governors] recently appointed who have not been easy to manage. On the Feng side there is much jealousy between the various military commanders and though all are more or less associated with the extreme wing of the KMT [Kuomintang], the real tie between them is the necessity to hang together to block the ambition of Chang Tso-lin.¹³⁶

It had become evident that conflict had increased to such an extent that the abolition of extraterritoriality would further threaten the safety of foreigners. As a result of the continued civil war within China the nationalists gravitated toward the Kuomintang if for no other reason than that it, in Waldron's words,

offered a coherent account (if arguably inaccurate) account of why China was in Chaos and how it had to change. China was the victim of imperialism, a force whose machinations sustained the activities of the generals who had just laid waste to important sections of the country.¹³⁷

Thus, due to the chaotic situation, which included strikes against foreign business, attacks against missionaries, the continued civil war, and the lack of cohesion within the Peking government it became clear that it was inadvisable for the Powers to give up their special privileges within China.

¹³⁵ Iriye, After Imperialism: The Search for a New Order in the Far East 1921-1931, 71.

¹³⁶ London Times, 10 November 1925.

¹³⁷ Waldron, From War to Nationalism: China's Turning Point, 1924-1925, 251.

MacMurray, as he sought a settlement of the May 30th Incident, increasingly distrusted the Chinese government. In a November 13th letter to Nelson T. Johnson, chief of the Far Eastern Division, MacMurray described the central government of China as having "no moral prestige, no authority, no military force subject to its own orders, no funds, [and] no prospect of stability."¹³⁸ Consequently, it was his belief that the Chinese were suffering from "anarchy and predatory militarism."¹³⁹ He had no intention of recommending that the Powers, especially the United States, relinquish extraterritoriality any time soon.

On November 25, 1925 the Japanese and British judges responsible for investigating the May 30th Incident found that "based upon the evidence" of the reports "the Shanghai authorities" were "free from blame."¹⁴⁰ MacMurray recognized that the Chinese would not react positively to the notion that the Shanghai police were not responsible for the killing on May 30, but the Shanghai Incident was officially settled on December 22 with the resignation of the Chief of Police McEuen and a "\$75,000 solatium to the victims or their families." By this time, the Commission on Extraterritoriality was preparing to meet.¹⁴¹

¹³⁸ MacMurray to Johnson, November 13, 1925, Box 77, John Van Antwerp MacMurray Papers, Seeley Mudd Library, Princeton University.

¹³⁹ *Ibid.*

¹⁴⁰ *FRUS*, 1925, 716.

¹⁴¹ *Ibid.*, 721.

CHAPTER 5

THE COMMISSION ON EXTRATERRITORIALITY AND THE RISE OF THE NATIONALISTS

France ratified the Washington Treaties on August 5, 1925, so the Commission on Extraterritoriality began its examination of the Chinese justice system at a time of increased distrust between the Powers and China in the wake of the May 30th Incident. The Commission, which included representatives from the United States, Belgium, the British Empire, China, France, Denmark, Italy, Japan, the Netherlands, Norway, Portugal, Spain, and Sweden, was scheduled to begin deliberations on December 10, 1925. Secretary of State Frank B. Kellogg appointed Chicago lawyer Silas H. Strawn as the American commissioner. Strawn was, as the Biographical Dictionary of Internationalists noted, "an expert on international law and commerce, and a board member of several major corporations."¹⁴² Yet once Strawn reached China it became evident that his expertise in international law had not prepared him for the conditions he would encounter in China.

The ongoing civil war interrupted transportation to North China, forcing postponement of the commission's initial session. For Strawn the impact of the civil war, according to Dr. Stanley Hornbeck, an advisor to the Commission, "produced an unfavorable impression."¹⁴³ Ultimately the Commission was

¹⁴² Warren F. Kuehl, Ed., Biographical Dictionary of Internationalists, (Westport, CT: Greenwood Press, 1983) 699.

¹⁴³ Hornbeck to Rogers, October 2, 1928, Box 404, Dr. Stanley K. Hornbeck Papers, Hoover Institution, Stanford University.

convened and began its work on January 12, 1926, much of it conducted, as Dorothy Borg has written, "behind an unyielding wall of secrecy."¹⁴⁴ Secrecy was necessary to maintain the illusion of cooperation between the Chinese government and the Powers. The Powers would proceed with their investigation with no intention of relinquishing extraterritoriality, while the Chinese government sought to maintain an illusion of cohesion.

On January 12, 1926, at the opening address of the Commission, Chinese Minister of Justice Dr. Wang Ch'ung-hui addressed the delegation and presented his argument for relinquishing extraterritoriality:

It has been the policy of the Chinese government to obtain the relinquishment of extraterritorial rights by the foreign Powers. In pursuance of this policy, China has steadfastly introduced reforms into her legal system. Several codes, modeled upon Western lines, have been promulgated.¹⁴⁵

These laws were presented to the Commission to create, Fishel suggests, "a favorable impression among the members of the international commission."¹⁴⁶

Yet further investigation would prove the laws were for effect and did not correlate with reality. Strawn and the other commissioners found that due to the civil war and chaos within China, the Peking government lacked the ability to

¹⁴⁴ Dorothy Borg, American Policy and the Chinese Revolution 1925-1928 (New York: American Institute of Pacific Relations and The Macmillian Company, 1947), 154.

¹⁴⁵ Address of Welcome by the Chinese Minister of Justice, Box 75, Dr. Stanley K. Hornbeck Papers, Hoover Institution, Stanford University.

¹⁴⁶ Wesley R. Fishel, The End of Extraterritoriality in China (New York: Octagon Books, 1974), 111.

implement laws which would protect foreign lives. As Strawn wrote to Secretary Kellogg on February 27, 1926:

We [the commission] have about completed our inspection of the beautifully printed laws, none of which have ever been passed by the Parliament and only a part of which have been promulgated by the President. If these laws had any other foundation than on paper; if they had courts capable of enforcing them and a Government to compel obedience, I think the suggested laws would protect the rights of our citizens but under the conditions now obtaining here I believe the opinion of the Commissioners, except the Chinese, is unanimous that it would not only be impossible for the Powers to grant the immediate abolition of extraterritoriality, but that it would be very unfortunate for China.¹⁴⁷

In his letter, Strawn noted that the Chinese legal system was characterized by "bribery, cruelty, false imprisonment, delays and other evidences of the utter lack of appreciation of the administration of justice."¹⁴⁸ MacMurray reported there was "unanimous sentiment against modification of treaties at present, in view of the revolutionary conditions obtaining here and the absence here of a Government which is capable of enforcing law."¹⁴⁹

By March 1926 it was obvious that the investigation of extraterritoriality was impeded by the civil war in China. Furthermore, the Kuomintang, with the assistance of the Soviets, was increasing its power base, thus posing a threat to

¹⁴⁷ Strawn to Kellogg, February 27, 1926, Box 78, John Van Antwerp MacMurray Papers, Seeley Mudd Library, Princeton University.

¹⁴⁸ *Ibid.*

¹⁴⁹ United States, Department of State Papers Relating to the Foreign Relations of the United States 1926 (Washington: Government Printing Office, 1940), 968. Hereafter cited as FRUS, 1926.

Western interests as well as to the "mask" of international cooperation. As

MacMurray reported on March 3, 1926:

New civil war is now in full swing. Ostensible issue one between radical and anti-radical forces. Former as so-called National armies and now control Government and Tientsin and are supported by Government in Canton and Soviets."¹⁵⁰

MacMurray continued to report that as a result of the ongoing civil war "railroad travel south of Tientsin and from Tientsin on Peking-Mukden RR [was] closed."¹⁵¹

The railroad closures limited the ability of the commissioners to complete their investigation. In a March 12, 1926 confidential letter to Secretary of State Kellogg, Strawn wrote that "the committee will report on Monday that it is impossible to travel in the interior because there is no railroad service" due to the continued civil war.¹⁵² Through April the situation continued to deteriorate and MacMurray noted that the Commission had "found it impossible to visit any other city in pursuance of its plan of investigations" since transportation was interrupted by the "so called Canton Government."¹⁵³

By April 1926 Strawn had concluded:

Notwithstanding the disaffection of the Canton Provinces and the fact that there is now no Government in China and conditions are generally chaotic, I can see nothing else for us to do but proceed with the preparation of the report [on extraterritoriality] as directed by the Washington resolution. Some of the Commissioners have taken the

¹⁵⁰ Ibid., 593.

¹⁵¹ Ibid.

¹⁵² Strawn to Kellogg, February 27, 1926, Box 78, John Van Antwerp MacMurray Papers, Seeley Mudd Library, Princeton University.

¹⁵³ FRUS, 1926, 613.

position that the action of the Canton Government constituted a violation by China of the letter and spirit of the Washington resolution. You will recall that in the 'additional Resolution' adopted at Washington it was stated that China was prepared to cooperate in the work of the Commission and to afford it every possible facility for the successful accomplishment of its tasks. This she has not done by failing to afford transportation and also in the positive action taken by the Canton Government.¹⁵⁴

Yet the Commission moved forward with its preliminary recommendations.

Strawn, and the other Commissioners, reported the difficulties they faced in conducting their investigation:

1. The absence of a Central Government in China, recognized as such by the several Provinces;
2. Complete and arbitrary control of every department of governmental activity by the militarists who are constantly warring among themselves;
3. Absence of laws enacted by a duly constituted authority subject to repeal only by that authority;
4. Absence of competent and trained judges, free from all outside influences, political and military;
5. Chaotic condition of the finances of China, with no provision for the payment of adequate compensation to the judiciary.¹⁵⁵

After listing these problems Strawn reported that conditions were so bad that the commissioners had "decided to abandon efforts to travel."¹⁵⁶ Yet by May 5 conditions had improved slightly in China and a traveling committee was appointed to examine both courts and prisons. This committee "returned to Peking on June 16 and reported to the full Commission on June 22, at which time another committee was appointed to draft the final report."¹⁵⁷

¹⁵⁴ Ibid., 1926, 972.

¹⁵⁵ Ibid., 1926, 973.

¹⁵⁶ Ibid., 975.

¹⁵⁷ Ibid., 120.

When Silas Strawn returned to the United States in June 1926 he was not replaced as commissioner since the work of the Commission was complete. Secretary of State Kellogg had instructed Strawn that "ideal conditions" in China were not required in order to relinquish extraterritoriality. As such he also noted that it was his "desire to renounce extraterritoriality in regard to China and everywhere else as soon as such action is compatible with the requirements of protecting American lives and interests."¹⁵⁸ Yet because conditions were so bad in China, the relinquishment of extraterritoriality desired by Secretary of State Kellogg was not prudent.

By July of 1926 the situation in South China had become more worrisome. The Nationalists, with the aid of their Soviet advisors, increased their stronghold, posing a threat not only to the Commission, but to American interests as well. Furthermore the Nationalist government at Canton, spearheaded by Borodin and Chang Kai-shek, made "preparations for [a] Northern Expedition" against "traitorous militarists [who] were obstacles to peaceful national unification."¹⁵⁹ MacMurray was aware of the Northern Expedition, as his dispatch on July 30, 1926 indicated that "General Chiang of [the] Whampoa Cadets" was preparing to leave for the Hunan front.¹⁶⁰

¹⁵⁸ *Ibid.*, 979.

¹⁵⁹ Martin C. Wilbur and Julie Lien-ying How, Documents on Communism, Nationalism, and Soviet Advisers in China 1918-1927, (New York: Columbia University Press, 1956), 258.

¹⁶⁰ FRUS, 1926, 618.

The anti-imperialist thrust of Nationalist propaganda is demonstrated in the Political Report of the Central Committee which targeted Britain, Japan and the United States. The Kuomintang devised the following policy, which was in effect from April 15 to June 28 1926, in relation to the Powers:

In coping with imperialist policies, we emphasize opposition to Britain first followed by opposition to Japan and then to the United States. British influence in China is deeply rooted and extends over great areas; Japanese influence is confined to a limited sphere; the Americans have no definite sphere at all. It is therefore our policy to utilize their differences and conflicts with a view to destroying their alliance.¹⁶¹

As a result of the expansion of the Kuomintang stronghold in the south, travel became increasingly difficult. Minister MacMurray declined an invitation by Admiral C. S. Williams to visit South China on the U.S.S. Huron, his flagship. He advised Williams on July 30:

The people in that region are in a state of mind in which they enjoy considering themselves oppressed and martyred by imperialists' gunboats; and if I were to make my peregrination in a destroyer, and some nationalistically-minded idiot were to burst forth with some stuff in the manner of The Nation, call me America's gunboat Minister, and ask what could have prompted coming with this display of force upon their peaceful scene, I am afraid it would prejudice my chances of making the contact and establishing the personal relationships which might otherwise be possible.¹⁶²

¹⁶¹ Wilbur and How, Documents on Communism, Nationalism, and Soviet Advisers in China 1918-1927, 723.

¹⁶² MacMurray to Williams, February 27, 1926, Box 78, John Van Antwerp MacMurray Papers, Seeley Mudd Library, Princeton University.

Although MacMurray was not willing to involve himself personally, citing general "lawlessness," he advocated that the U.S. Government

should adopt a firm attitude and inform the regime at Canton that if it cannot protect American citizens in accordance with treaty requirements and general obligations, the U.S. Government will be compelled with regret to take on its own account measures necessary to that end.¹⁶³

While MacMurray disapproved of the Canton regime, by August he was seeking a discontinuance of cooperation with Peking government:

The regime now in existence nor any likely to succeed it will, except as moved thereto either by some quid pro quo of support of this factional group against its rivals or by coercion, make any attempt to meet its international responsibilities. Of these means of influencing, neither is open to us. The practical reason for a continuation of the diplomatic fiction of a central government has come to an end. The fact must be accepted by us. When in the future China is able again to constitute such a government as can be recognized because of its merits, conformable to the practice prevailing in other countries, recognition will have to be considered according to those circumstances.¹⁶⁴

MacMurray proposed to "discard frankly the fiction that a central government" existed in Peking. He realized that neither Peking nor Canton had the ability to protect American lives and interests.

In August the commander of Cantonese forces at Yochow "served notice that all foreign warships must stop at Chenglingki in order to be visited by his men."¹⁶⁵ This posed a direct threat to American interests and by default foreign lives were in danger, yet Secretary of State Kellogg disagreed with MacMurray

¹⁶³ ERUS, 1926, 725.

¹⁶⁴ Ibid., 674.

¹⁶⁵ Ibid., 621.

and sought a continuance of implementation of the Washington treaties. On August 24, 1926 he advised MacMurray:

The responsibility for the Washington treaties was largely this Government's, and we have insisted on various occasion that we intended to carry out those treaties in absolute good faith and to consider the whole matter of extraterritoriality and our tariff relations with the objective of satisfying Chinese aspirations. I realize how weak the Government [of China] is, and I concur fulfilling your views regarding its impotency. However, since we have insisted on going ahead, and in view of our responsibility for the Washington treaties and for their fulfillment, I cannot believe that it is wise for the United States to take the lead in abandoning the Conference and in giving public notification to China that she has no government.¹⁶⁶

While both Kellogg and MacMurray agreed that the central government in China was weak and in a chaotic state, Kellogg sought to maintain the spirit of the Washington treaties. Yet MacMurray recognized that this was no longer possible, and advocated a policy of non-recognition.

Despite the difficulties the Commission faced in reaching many of the war torn regions of China, especially the South, in September of 1926 it released its report. The tone of the Commission's report differed from the State Department dispatches as well as both MacMurray's and Strawn's personal correspondence. The report tended to favor the eventual abolition of extraterritoriality since it would ease the growing anti-foreign sentiment within China. The opening remarks in the summary indicate the reasons for this sentiment:

the growth of nationalistic feeling in China, along with the rapid expansion of foreign interest in the country, bring more frequently into prominence the anomalies of the present system. Among such anomalies the commission lists the multiplicity of courts and the diversity of laws

¹⁶⁶ Ibid., 682.

involved, pointing out, among other things, that the extraterritorial court in which a trial is taking place has no jurisdiction over an alien plaintiff in the same court, and that several courts of several nationalities become involved when aliens of different nationalities are joined in a crime or a suit.¹⁶⁷

The most problematic aspect in the Commission's view were "cases in which the plaintiff or complainant [was] Chinese" since it led to "places of refuge for Chinese who [were] wanted by the Chinese court."¹⁶⁸

Thus, despite Strawn's and MacMurray's reservations about the status of the Chinese government, the report sought to strike a cooperative tone. Nothing was mentioned of the inability of the Commission to visit many of the war torn areas. Furthermore, its members officially extended thanks to the Chinese government for "their transportation arrangements" and stated that "no expense or trouble was spared to give the Committee [members] a cordial welcome in every place."¹⁶⁹

The report of the Commission on Extraterritoriality consisted of four parts. Part I was, "The Current Practice of Extraterritoriality in China;" Part II covered, "Laws and Judicial System of China;" Part III dealt with, "Administration of Justice in China;" while the conclusion, Part IV, offered "The Recommendations of the Commission." A brief outline of the recommendations is necessary in order to understand the tone of the Commission's report.

¹⁶⁷ United States, Department of State, Report of the Commission on Extraterritoriality in China: Peking, September 16, 1926 (Washington: Government Printing Office, 1926), VII.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid., 245.

First, it was recommended that China establish a judicial system based upon a written law or code. It was suggested that these laws be uniform throughout all of the Chinese provinces. Further, modern courts and prisons, based upon the Western model, were to be established. Next, persons under Chinese jurisdiction, mixed court case where extraterritoriality did not exist, were to be tried in modern Chinese courts, although lawyers of foreign nationals were to be allowed to represent their clients. The extraterritorial Powers were advised to correct abuses which existed in protecting Chinese businessmen. Finally, it was recommended that cases which were solved by arbitration were to be recognized as valid.

Although the report of the Commission had a cooperative tone, due to the lack of cohesion within the central government and the ongoing civil war, there was no prospect that extraterritoriality would be ended soon. The Commission's report was supportive of Secretary of State Kellogg's efforts to maintain the illusion of international cooperation, but the Nationalists in Canton continued to increase their power and the Peking government continued to decline.

By September 1926, as the result of the Commission's recommendations, Chinese "litigants" were returned to Chinese jurisdiction which led the American Bar Association to create "a scare about foreign extraterritorial rights being threatened," but in the view of the New York Times reporter Thomas F. Millard there was "absolutely no foundation for it."¹⁷⁰ Secretary of State Kellogg agreed.

¹⁷⁰ New York Times, 19 September 1926.

Minister MacMurray's more negative view of the situation in China was shared by Strawn, who by September had returned to the United States. Strawn later argued that "further negotiations [were] impossible for the present because of its difficulty of knowing who and what the Chinese Government is and where it has its seat."¹⁷¹ Furthermore, Strawn refused to accept that foreign actions were responsible for increased nationalistic sentiment within China. As such he told a Colorado Springs business group on December 7, 1926 that the conditions in China were "internal and not external" and "that the anti-foreign and anti-Christian feeling now obtaining in some parts of China" was "the result of persistent agitation and propoganda."¹⁷² Strawn's speeches led to a reaction against this attitude toward China by members of the Senate.

One of these Senators was Borah who, as Borg noted, accurately pointed out:

that the people in discussing China were likely to think only in terms of the facts which formed part of the present and not in terms of those facts which, existing in the past had contributed to the creation of current conditions.¹⁷³

Borah acknowledged that China was controlled to a large extent by the Powers who controlled "natural resources" and who "were exempt from Chinese law."¹⁷⁴

¹⁷¹ Ibid, 10 October 1926.

¹⁷² "An Address Before the International Chamber of Commerce at Colorado Springs", December 7, 1926, Box 404, Dr. Stanley Hornbeck Papers, Hoover Institution, Stanford University.

¹⁷³ Borg, American Policy and the Chinese Revolution 1925-1928, 189.

¹⁷⁴ Ibid., 190.

It was evident that by the end of 1926, despite the completion of the Commission on Extraterritoriality's investigation, extraterritoriality remained controversial.

Senator Borah and Secretary of State Kellogg were attempting to move toward the abolition of extraterritoriality and treaty revision, while Strawn and MacMurray were emphasizing the chaos in China. In December MacMurray noted to Strawn in a confidential letter that the Cantonese were "exulting in defying the Powers and all their rights" and were "set upon dragging down foreign rights and interest into the chaos" which prevailed "among the Chinese themselves."¹⁷⁵

Reflecting the Kellogg approach, Stephen G. Porter, a Republican congressman from Pennsylvania and chairman of the House Committee on Foreign Affairs, submitted a lengthy resolution on January 4, 1927:

Whereas the United States in its relations with China has always endeavored to act in a spirit of mutual fairness and equity and with due regard for the conditions prevailing from time to time in the two countries, and since the development of conditions in China makes it desirable that the United States at the present time in accordance with its traditional policy should take the initiative in bringing about a readjustment of its treaty relations with China; therefore be it: Resolved by the House of Representative (the Senate concurring) that the President of the United States be, and hereby is, respectfully requested forthwith to enter into negotiations with the duly accredited agents of the Republic of China, authorized to speak for the people of China, with a view to the negotiation and the drafting of a treaty, or of treaties, between the United States of America and the Republic of China which shall take the place of the treaties now in force between the two countries which provide for the exercise in China of American extraterritorial or jurisdictional rights or limit her full autonomy with reference to the levying of customs dues or other taxes, or of such other treaty provision as may be found to be unequal or nonreciprocal in character, to the end that henceforth the treaty relations between the two countries shall be upon an equal and reciprocal basis

¹⁷⁵ MacMurray to Strawn, December 23, 1926, Box 82, John Van Antwerp MacMurray Papers, Sealey Mudd Library, Princeton University.

and will be such as will in no way offend the sovereign dignity of either of the parties, or place obstacles in the way of realization by either of them of their several national aspirations or of maintenance by them of their several legitimate domestic policies.¹⁷⁶

In response to House approval of the resolution, Secretary of State Kellogg "affirmed that the United States was prepared to negotiate with China," stating on January 26th American willingness to negotiate "the release of extraterritorial rights as soon as China" was able "to provide protection by law and through her courts to American citizens, their rights and property."¹⁷⁷ In doing so he demonstrated good faith toward the international framework which had been set forth at the Washington Conference. The Senate, however, did not act on the Porter amendment.

Ultimately it would be Chiang Kai-shek who would place the most pressure on Washington and the international community to relinquish extraterritorial rights, and by February of 1927 he was in a position to attack the Shanghai International Settlement. Already he had used the anti-foreign sentiment to his advantage in coopting or defeating competing warlords. In January, as Donald Jordan noted,

at Hankow and Kuikiang, infuriated Chinese mobs spurred by agitators from within KMT [Kuomintang] ranks had overrun the British concession. Only by turning over a part of the authority of the concessions did the British avoid a blood bath.¹⁷⁸

¹⁷⁶ Borg, American Policy and the Chinese Revolution 1925-1928, 242.

¹⁷⁷ *Ibid.*, 246.

¹⁷⁸ Donald A. Jordan, The Northern Expedition: China's National Revolution of 1926-1928 (Honolulu: The University of Hawaii Press, 1976), 106.

The Nationalists continued to strengthen their position, threatening the safety of foreign lives and in March of 1927 MacMurray's dispatches described the situation as a "critical state of affairs."¹⁷⁹

Although Chiang Kai-shek did not attempt to push the foreigners out of Shanghai and purged the Communists from this movement, with the completion of the Northern Expedition Chiang Kai-shek was able to exert control over Peking and establish a new government at Nanking. On December 29, 1929 his government ordered a ban on foreign courts as of January 30, 1930, although, as Fishel noted, "the Department of State did not regard the legal status quo as having been altered by these declarations."¹⁸⁰

Ultimately such Chinese demands for abolition of extraterritoriality had to be put on hold because of the continued Japanese expansion into Manchuria. On September 18, 1931 "an officer of the Kwantung army ignited an explosive along the South Manchurian Railway" resulting in the Japanese takeover of Manchuria.¹⁸¹ Japan now posed an even more significant threat to Chinese sovereignty and China's battle became one of survival when full-scale war broke out in 1937.

¹⁷⁹ United States, Department of State, Papers Relating to the Foreign Relations of the United States, 1927 (Washington Government Printing Office, 1940), 264. Hereafter cited as FRUS, 1927.

¹⁸⁰ Fishel, The End of Extraterritoriality in China, 172.

¹⁸¹ Akira Iriye, After Imperialism: The Search for a New Order in the Far East 1921-1931 (Cambridge: Harvard University Press, 1965), 298.

During the next several years the international order would continue to shift. After 1939 Britain was fighting for its own survival against Adolf Hitler's Germany as Europe once again erupted into war. From 1941 Russia, too, was fighting for its life against German invasion. The Americans, meanwhile had taken an isolationist stance toward the wars in Europe and Asia, leaving China to fight on its own against Japan.

On December 7, 1941 America was forced into the global conflict when the Japanese bombed Pearl Harbor. By that time, Fishel points out:

extraterritoriality had become little more than a legal term. France was weak and powerless. Italy and Japan were allies, though legally the former was a neutral in the Sino-Japanese conflict struggle. The only Great Powers still in the picture were the United States and Great Britain, both of which had by this time pledged that they would relinquish their rights in China when that nation was again at peace.¹⁸²

After declaring war on Britain and the United States, Japan "occupied their holdings in China," making London and Washington realize "that their special privileges were worthless."¹⁸³ Furthermore, Britain and the United States needed an ally in the Far East. This need of assistance propelled them to negotiate an end to extraterritoriality in 1943. Consequently, it was World War II which finally led to the end of extra in a treaty between the United States and China. In addition, Article VII of the Treaty, for the Relinquishment of Extraterritorial Rights

¹⁸² Fishel, The End of Extraterritoriality in China, 217.

¹⁸³ *Ibid.*

in China, signed at Washington on January 11, 1943, paved the way for future negotiations between the two countries on an equal basis.

CHAPTER 6

CONCLUSION: NATIONALIST UNIFICATION AND ABROGATION OF EXTRATERRITORIALITY

Britain first initiated the practice of extraterritoriality in 1842 after defeating the Manchu Dynasty in the Opium War. The two effects of the Chinese defeat were a weakened dynasty and increased foreign intrusion. Britain began the practice of forcing a treaty system upon the weakened Chinese. After Britain and China signed the Treaty of Nanking in 1842, which provided for extraterritoriality, other countries, including France and Russia, negotiated similar treaties. Also, Caleb Cushing negotiated the Treaty of Wanghia for the United States which established the practice of extraterritoriality for the Americans. The treaty system allowed foreigners to develop business in China free from Chinese jurisdiction. Missionaries were able to preach their gospel without reprisal from the Chinese government since they were also protected by extraterritoriality.

Once the Chinese dynasty was exposed as weak in 1842, an era of concession acquisition began. Japan had its opportunity in 1895 with the Sino-Japanese war, when China was forced to cede Taiwan and, temporarily, the Liaotung Peninsula to Japan, and to pay an indemnity which resulted in foreign bankers competing for a portion of the Chinese loans. As China appeared ripe for dismemberment, the United States adopted the "Open Door" policy to insure that Americans would not be left out of the China trade.

As a result of foreign domination two movements began to grow which further exposed the weakness of the Manchu dynasty. The first involved the

Boxers, who held the Peking legations hostage in 1900 and were subsequently defeated. The second was led by the Dr. Sun Yat-sen. Dr. Sun set in motion a revolutionary fervor, aided by a philosophy known as the Three People's Principles (nationalism, democracy and socialism). Dr. Sun gave the Chinese people an ideology with which to fight external domination. By 1911 the Manchu dynasty fell.

Yet rather than the republic which Dr. Sun had proposed, China soon developed an authoritarian regime under the military man Yüan Shi-k'ai. However, Yüan was not able to strengthen China against external forces. As a result, Japan was able to exert its influence and forced the Twenty-one Demands upon China. Order broke down and warlords vied for power, sometimes with the aid and assistance of the foreigners. During this period Dr. Sun retreated to South China where he continued to espouse his Three People's Principles and promoted his party, the Kuomintang. He accused the warlords of aiding the foreigners and thereby contributing to the national loss of sovereignty. Meanwhile Britain, France, and the United States supported the government in Peking, and the various warlords who controlled it. Japan supported Chang Tso-lin in order to ensure a dominant position in Manchuria.

Shortly after the breakdown of the Chinese republic, Europe erupted in war in 1914, creating international disarray. China hoped to gain favor with the Powers by supporting the Allied Powers against Germany. This enabled the Chinese to justify stripping German citizens of their extraterritorial privilege in

China. Chinese were also encouraged by the Russian Revolution of 1917 since the new Soviet government relinquished its extraterritorial rights. The Russian Revolution not only threatened the international order by establishing a Communist system, but also established a new model for China to follow.

When World War I ended, the Chinese were not prepared for the disappointment they would face at the Versailles Conference in 1919. Despite the rhetoric of self-determination, the Japanese were awarded the former German concessions in Shantung. The Chinese people reacted negatively and students led demonstrations and boycotts against the foreign community. As a result of this May 4th Movement, the Chinese Communist Party was formed. In 1923 the Communists, along with their Russian advisors, soon aligned themselves with the Kuomintang.

In 1922 the Washington Disarmament Conference attempted to establish a new international balance of power. Consequently, one of the Washington treaties pertained to China. The Powers agreed that China had the right to develop without interference and Resolution V of the Nine Power Treaty provided for the establishment of a Commission on Extraterritoriality. Yet ratification of the treaties established at Washington in 1922 was delayed by the gold franc dispute between China and France. As a result, the Powers were viewed as insincere by the Chinese.

Between 1922 and 1924 the Fengtien clique, led by Chang Tso-lin, and the Chihli clique led by Wu P'ei-fu engaged in a power struggle which developed

into the Chihli-Fengtien War. Meanwhile, Bolshevik influence was increasing in the South. As a result, between 1922 and 1924 the internal balance of power in China continued to shift.

In 1925 the situation in China exploded into a nationalist fervor when a worker in a Japanese factory was killed in the International Settlement. On May 30th when students protested this killing, the international police opened fire killing 12 students. As a result, nationalists in China demanded justice and clamored for the abolition of extraterritoriality. One month after this May 30th Incident the United States sent John Van Antwerp MacMurray as its minister to China. MacMurray took the position that the May 30 Incident should be resolved quickly and that the Chief of Police Kenneth John McEuen should be forced to resign. Furthermore, while MacMurray understood Chinese nationalism, he lacked sympathy for the Chinese position on extraterritoriality because of his concern about maintaining order.

Some Americans, however, believed it necessary to appease Chinese sentiments. Senator William Borah was prominent in this regard, publicly supporting treaty revision and the abolition of extraterritoriality. Many missionaries, hoping to protect their own position in China, took a similar stance. Press coverage of such statements left MacMurray in a precarious position. Responsible for sorting out the mess, he found the situation so chaotic that he opposed relinquishment of extraterritoriality and ultimately advocated

withdrawing recognition of the Chinese government, recommendations that were not favorably received by Secretary of State Frank B. Kellogg.

In addition, the Nationalists, under the guidance of Chang Kai-shek, who led the Kuomintang after Dr. Sun's death in 1925, and with the aid of the Bolsheviks, began to promote both boycotts and economic blockades in the South. The result was increased chaos and lack of stability within China. Accordingly, the situation which had looked hopeful for treaty revision in 1922 had changed dramatically and the safety and protection of foreign lives were in question. So when the Commission on Extraterritoriality finally convened in 1926 it no longer was prudent to consider relinquishing extraterritoriality.

The Chinese were unable to successfully challenge extraterritoriality at this time due to a lack of cohesion within their own government. Minister MacMurray was justified in his view that foreigners still needed extraterritorial protection. He recognized that the Chinese government had to resolve its own internal situation before any international agreement could be reached.

Silas Strawn, the American representative in the Commission on Extraterritoriality, was in accordance with MacMurray's views. Neither Strawn nor MacMurray had a concrete solution to the question of extraterritoriality, but they were correct in their assessment of the chaos within China.

Chiang Kai-shek's success in establishing a new national government soon intensified pressure for treaty revision, but their movement was shelved with the intensification of Japanese pressure against Japan with the Manchurian

Incident of 1931. Ultimately the conditions of World War II finally provided the opportunity for the United States and Britain to end the practice of extraterritoriality. The United States and China did so on January 11, 1943 when the two countries signed a treaty abolishing the practice.

APPENDIX I

Treaty of Nanking, 1842

[Ratifications exchanged at Hong Kong, June 26, 1843]

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Emperor of China, being desirous of putting an end to the misunderstanding and consequent hostilities which have arisen between the 2 countries, have resolved to conclude a Treaty for that purpose, and have therefore named as their Plenipotentiaries, that is to say:

Her Majesty the Queen of Great Britain and Ireland, Sir Henry Pottinger, Bart., a Major-General in the service of the East India Company, &c.;

And His Imperial Majesty the Emperor of China, the High Commissioners Keying, a member of the Imperial House, a Guardian of the Crown Prince, and General for the garrison of Canton; and Elepoo, of the Imperial Kindred, graciously permitted to wear the insignia of the first rank, and the distinction of a peacock's feather, lately Minister and Governor-General, &c., and now Lieutenant-General commanding at Chapoo;

Art. I. There shall henceforward be peace and friendship between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of China, and between their respective subjects, who shall enjoy full security and protection for their persons and property within the dominions of the other.

II. His Majesty the Emperor of China agrees, that British subjects, with their families and establishments, shall be allowed to reside, for the purposes of carrying on their mercantile pursuits, without molestation or restraint, at the cities and towns of Canton, Amoy, Foochowfoo, Ningpo, and Shanghai; and Her Majesty the Queen of Great Britain, &c., will appoint Superintendents, or Consular Officers, to reside at each of the above-named cities or towns, to be the medium of communication between the Chinese authorities and the said merchants, and to see that the just duties and other dues of the Chinese Government, as hereafter provided for, are duly discharged by Her Britannic Majesty's subjects.

III. It being obviously necessary and desirable that British subjects should have some port whereat they may careen and refit their ships when required, and keep stores for that purpose, His Majesty the Emperor of China cedes to Her Majesty the Queen of Great Britain, &c., the Island of Hong-Kong, to be possessed in perpetuity by Her Britannic Majesty, her heirs and successors, and to be governed by such laws and regulations as Her Majesty the Queen of Great Britain, &c., shall see fit to direct.

IV. The Emperor of China agrees to pay the sum of 6,000,000 of dollars, as the value of the opium which was delivered up at Canton in the month of March, 1839, as a ransom for the lives of Her Britannic Majesty's Superintendent

and subjects, who had been imprisoned and threatened with death by the Chinese High Officers.

V. The Government of China having compelled the British merchants trading at Canton to deal exclusively with certain Chinese merchants, called Hong merchants (or Co-Hong), who had been licensed by the Chinese Government for that purpose, the Emperor of China agrees to abolish the practice in future at all ports where British merchants may reside, and to permit them to carry on their mercantile transactions with whatever persons they please; and His Imperial Majesty further agrees to pay to the British Government the sum of 3,000,000 of dollars, on account of debts due to British subjects by some of the said Hong merchants, or Co-Hong, who have become insolvent, and who owe very large sums of money to subjects of Her Britannic Majesty.

VI. The Government of Her Britannic Majesty having been obliged to send out an expedition to demand and obtain redress for the violent and unjust proceedings of the Chinese High Authorities towards Her Britannic Majesty's officer and subjects, the Emperor of China agrees to pay the sum of 12,000,000 of dollars, on account of the expenses incurred; and Her Britannic Majesty's Plenipotentiary voluntarily agrees, on behalf of Her Majesty, to deduct from the said amount of 12,000,000 of dollars, any sums which may have been received by Her Majesty's combined forces, as ransom for cities and towns in China, subsequent to the 1st day of August 1841.

VII. It is agreed, that the total amount of 21,000,000 of dollars, described in the 3 preceding articles, shall be paid as follows:

6,000,000 immediately.

6,000,000 in 1843; that is, 3,000,000 on or before the 30th of the month of June, and 3,000,000 on or before the 31st of December.

5,000,000 in 1844; that is, 2,500,000 on or before the 30th of June, and 2,500,000 on or before the 31st of December.

4,000,000 in 1845; that is, 2,000,000 on or before the 30th of June, and 2,000,000 on or before the 31st of December.

And it is further stipulated, that interest, at the rate of 5 per cent, per annum, shall be paid by the Government of China on any portion of the above sums that are not punctually discharged at the periods fixed.

VIII. The Emperor of China agrees to release, unconditionally, all subjects of Her Britannic Majesty (whether natives of Europe or India), who may be in confinement at this moment in any part of the Chinese emperor.

IV. The Emperor of China agrees to publish and promulgate, under his Imperial sign manual and seal, a full and entire amnesty and act of indemnity to all subjects of China, on account of their having resided under, or having had dealings and intercourse with, or having entered the service of, Her Britannic Majesty, or of Her Majesty's officers; and His Imperial Majesty further engages to release all Chinese subjects who may be at this moment in confinement for similar reasons.

X. His Majesty the Emperor of China agrees to establish at all the ports which are, by the IInd Article of this Treaty, to be thrown open for the resort of British merchants, a fair and regular tariff of export and import customs and other dues, which tariff shall be publicly notified and promulgated for general information; and the Emperor further engages, that when British merchandise shall have once paid at any of the said ports the regulated customs and dues, agreeable to the tariff to be hereafter fixed, such merchandise may be conveyed by Chinese merchants to any province or city in the interior of the Empire of China, on paying a further amount as transit duties, which shall not exceed per cent, on tariff value of such goods.

XI. It is agreed that Her Britannic Majesty's Chief High Officer in China shall correspond with the Chinese High Officers, both at the capital and in the provinces, under the term "communication"; the subordinate British Officers and Chinese High Officers in the provinces, under the terms "statement" on the part of the former, and on the part of the latter, "declaration"; and the subordinates of both countries on a footing of perfect equality: merchants and others not holding official situations, and therefore not included in the above, on both sides, to use the term "representation" in all papers addressed to, or intended for the notice of, the respective Governments.

XII. On the assent of the Emperor of China to this Treaty being received, and the discharge of the first installment of money, Her Britannic Majesty's forces will retire from Nanking and the Grand Canal, and will no longer molest or stop the trade of China. The military post at Chinhai will also be withdrawn; but the Islands of Koolangsoo, and that of Chusan, will continue to be held by Her Majesty's forces until the money payments, and the arrangements for opening the ports to British merchants, be completed.

XIII. The ratification of this Treaty by Her Majesty the Queen of Great Britain, &c., and His Majesty the Emperor of China, shall be exchanged as soon as the great distance which separates England from China will admit; but in the meantime, counterpart copies of it, signed and sealed by the plenipotentiaries on behalf of their respective Sovereigns, shall be mutually delivered, and all its provisions and arrangements shall take effect.

Done at Nanking, and signed and sealed by the Plenipotentiaries on board Her Britannic Majesty's ship Cornwallis, this 29th day of August, 1842; corresponding with the Chinese date, 24th day of the 7th month, in the 22nd year of Tauukwang.¹⁸⁴

¹⁸⁴ Clive Parry, comp., The Consolidated Treaty Series, vol. 93, Treaty between China and Great Britain, signed at Nanking, 29 August 1842, (New York: Oceana Publications, Inc., 1963), 465-469.

APPENDIX II
RECOMMENDATIONS OF THE COMMISSION ON EXTRATERRITORIALITY

Reported to Secretary of State Frank B. Kellogg by Chargé Mayer
September 17, 1926

- I. The administration of justice with respect to the civilian population in China must be entrusted to a judiciary which shall be effectively protected against any unwarranted interference by the executive or other branches of the Government, whether civil or military.
- II. The Chinese Government should adopt the following program for the development of the existing legal, judicial and prison systems of China:
 1. It should comply with the provisions of parts 2 and 3 of the whole report relating to the laws and to the judicial police and prison systems, with a view to making such amendments and taking such action as may be necessary to meet the observations there made.
 2. It should be complete and put into force the following laws: (1) Civil code; (2) commercial code, including negotiable instruments law, maritime law and insurance law; (3) revised criminal code; (4) banking law; (5) bankruptcy law; (6) patent law; (7) land expropriation law; (8) law concerning notaries public.
 3. It should establish and maintain a uniformity for the regular enactment, promulgation and rescission of laws, so that there may be no uncertainty as to the laws of China.
 4. It should extend the system of modern courts, modern prisons and modern detention houses with a view to the elimination of the magistrate courts and of the old-style prisons and detention houses.
 5. It should make adequate financial provisions for the maintenance courts, detention houses and prisons and their personnel.
- III. It is suggested that, prior to the reasonable compliance with all the recommendations above mentioned but after the principal items thereof have been carried out, the Powers concerned, if so desired by the Chinese Government, might consider the abolition of extraterritoriality according to such progressive scheme (whether geographical, partial or otherwise) as may be agreed upon.
- IV. Pending the abolition of extraterritoriality, the Governments of the Powers concerned should consider part 1 of this report with a view to meeting the observations there made and, with the cooperation of the Chinese Government wherever necessary, should make certain modifications in the existing systems and practice of extraterritoriality as follows:
 1. Application of Chinese laws. The Powers concerned should administer, so far as practicable, in their extraterritorial or consular courts such laws and regulations of China as they may deem proper to

adopt.

2. Mixed cases and mixed courts. As a general proposition mixed cases between nationals of the Powers concerned as plaintiffs and persons under Chinese jurisdiction as defendants should be tried before the modern Chinese courts (Shen P'an T'ing) without the presence of a foreign assessor to watch the proceeding or otherwise participate. With regard to the existing special mixed courts, their organization and procedure should, as far as the special conditions in the settlements and concessions warrant, be brought more into accord with the organization and procedure of the modern Chinese judicial system. Lawyers who are nationals of extraterritorial Powers and who are qualified to appear before the extraterritorial or consular courts should be permitted, subject to the laws and regulations governing Chinese lawyers, to represent clients, foreign or Chinese, in all mixed cases. No examination would be required as a qualification for practice in such cases.

3. Nationals of extraterritorial Powers. (a) The extraterritorial Powers should correct certain abuses which have arisen through the extension of foreign protection to Chinese as well as to business and shipping interests, the actual ownership of which is wholly or mainly Chinese. (b) The extraterritorial Powers which do not now require compulsory periodical registration of their nationals in China should make provision for compulsory registration at definite intervals.

4. Judicial assistance. Necessary arrangements should be made in regard to judicial assistance (including commissions rogatoires) between the Chinese authorities and the authorities of the extraterritorial Powers themselves, e. g.: (a) All agreements between the foreigners and persons under Chinese jurisdiction which provide for the settlement of civil matters by arbitration should be recognized, and the awards made in pursuance thereof should be enforced by the extraterritorial or consular districts (courts) in the control case of persons under their jurisdiction, except when in the opinion of the competent court the decision is contrary to public order or good morals. (b) Satisfactory arrangements should be made between the Chinese Government and the Powers concerned for the prompt execution of judgments, summonses, and warrants of arrest or search, concerning persons under Chinese jurisdiction, duly issued by the Chinese courts and certified by the competent Chinese authorities and vice versa.

5. Taxation. Pending the abolition of extraterritoriality, the nationals of the Powers concerned should be required to pay such taxes as may be prescribed laws and regulations duly promulgated by the competent authorities of the Chinese Government and recognized by the Powers concerned as applicable to their nationals. ¹⁸⁵

¹⁸⁵United States Department of State, Papers Relating to the Foreign Relations of the United States, 1926, 982.

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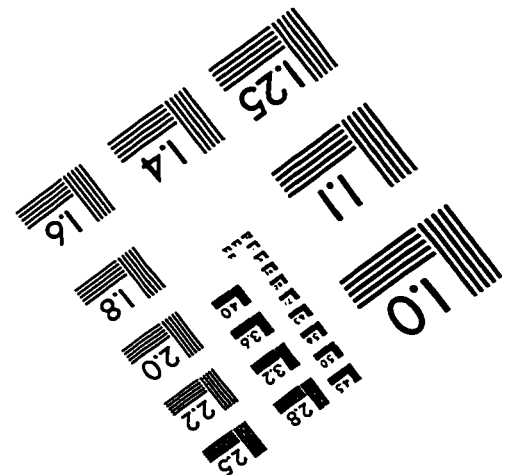
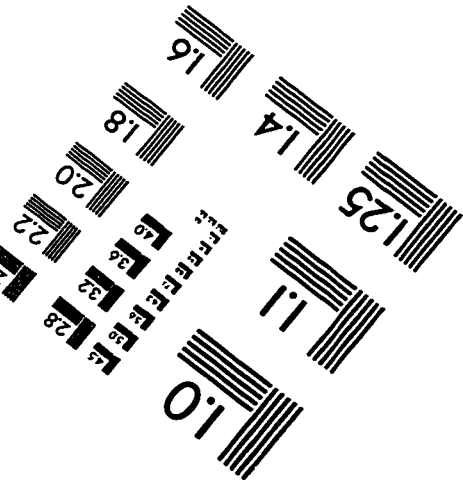
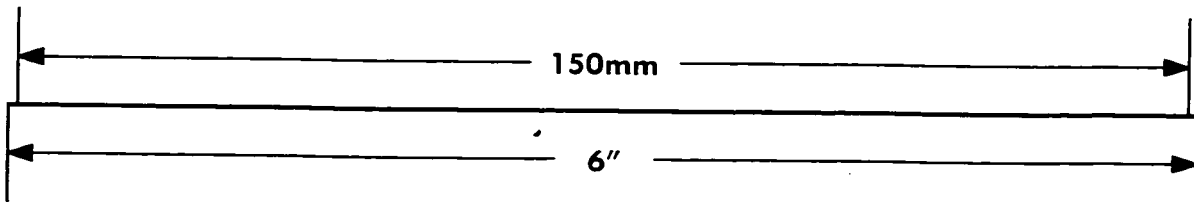
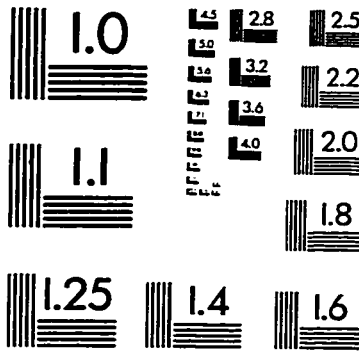
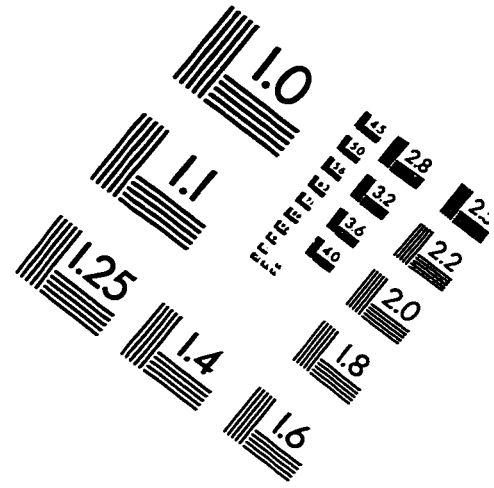
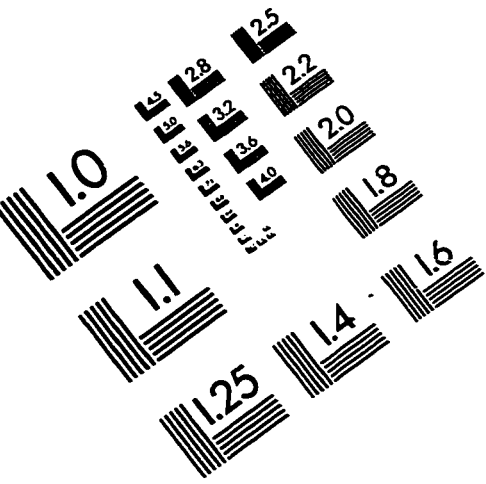
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